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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 317

[Docket No. FSIS–2008–0017]

RIN [0583–AD45]

Descriptive Designation for Needle- or Blade-Tenderized (Mechanically Tenderized) Beef Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to require the use of the descriptive designation ''mechanically tenderized,'' ''blade tenderized,'' or ''needle tenderized'' on the labels of raw or partially cooked needle- or blade-tenderized beef products, including beef products injected with a marinade or solution, unless the products are to be fully cooked or to receive another full lethality treatment at an official establishment. Under these final regulations, the product names of the affected products will have to include the descriptive designation ''mechanically tenderized,'' ''blade tenderized,'' or ''needle tenderized'' and an accurate description of the beef component. The print for all words in the descriptive designation and the product name will have to be in a single easy-to-read type style and color and must appear on a single-color contrasting background. The print may appear in upper and lower case letters, with the lower case letters not smaller than one-third (⅓) the size of the largest letter. In addition, the labels of raw and partially cooked needle- or blade-tenderized beef products destined for household consumers, hotels, restaurants, or similar institutions will have to bear validated cooking instructions. The instructions will have to specify the minimum internal temperatures and any hold or ''dwell'' times for the products to ensure that they are fully cooked.

FSIS is amending the regulations because of scientific evidence that mechanically tenderized beef products need to be fully cooked in order to reduce the risk of pathogenic bacteria that may be transferred to the interior of the meat during mechanical tenderization.

FSIS is also announcing the availability of updated guidance for the use of federally inspected establishments in developing validated cooking instructions for mechanically tenderized product.

DATES: The effective date is May 17, 2016. As discussed below in the preamble, FSIS has established this effective date based on the potential public health benefits.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Assistant Administrator, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–3700; Telephone (202) 205–0495; Fax (202) 720–2025.

SUPPLEMENTARY INFORMATION:

Executive Summary

Mechanically tenderizing beef with a needle or blade has the potential to transfer pathogens that may occur on the exterior of the product into its interior. In such circumstances, it is important that the interior of the beef product be fully cooked. Not all mechanically tenderized products are readily distinguishable from non-tenderized products. Recent outbreak data indicate that consumers and food service facilities sometimes do not cook mechanically tenderized raw beef products to a temperature and for a time sufficient to destroy harmful bacteria that may have been transferred to the tenderized interior of the product. FSIS has, therefore, determined that labeling to state that the beef product is tenderized, along with validated cooking instructions, are necessary to provide consumers and food service workers the essential information to safely prepare the product.

On June 10, 2013, FSIS proposed new labeling requirements for raw or partially cooked needle- or blade-tenderized beef products, including beef products injected with a marinade or solution (78 FR 34589). Having reviewed and considered all comments received on the proposal, FSIS is finalizing all the proposed regulatory requirements with minor changes.

FSIS is requiring the labels of raw or partially cooked needle- or blade-tenderized beef products, including beef products injected with marinade or solution, to bear a descriptive designation that clearly indicates that the product has been mechanically tenderized, unless such product is destined to be fully cooked or to receive another full lethality treatment [1] that renders the product ready-to-eat, as defined in 9 CFR 430.1, in an official establishment.[2] To provide flexibility and respond to comments, FSIS is requiring in the final rule that the terms ''needle tenderized'' or ''mechanically tenderized'' be used as the descriptive designation for needle tenderized beef products and the terms ''mechanically tenderized'' or ''blade tenderized'' be used as the descriptive designation for blade tenderized beef products.

In addition, to ensure that the descriptive designation is readily apparent on the label, FSIS is requiring the print for all words in the descriptive designation must appear in a single easy-to-read type style and color and on a single-color contrasting background. The print may appear in upper and lower case letters, with the lower case letters not smaller than ⅓ the size of the largest letter.

FSIS also is requiring that labels of raw and partially cooked needle- and blade-tenderized beef products destined for household consumers, hotels, restaurants, and similar institutions include cooking instructions that have been validated to ensure that any pathogens that may be on or in the

[1] Examples of full lethality treatments other than cooking that render a product ready-to-eat can include high pressure processing and irradiation, provided the establishment has supporting documentation that shows the treatment achieves at least a 5-log reduction for *Salmonella* and Shiga Toxin-producing *E.coli* organisms (including *E.coli* O157:H7), and applies the treatment consistent with its critical operational parameters.

[2] Any slaughtering, cutting, boning, meat canning, curing, smoking, salting, packing, rendering, or similar establishment at which inspection is maintained under (FSIS) regulations (9 CFR 301.2).

product are destroyed. To clarify requirements and respond to comments, FSIS is providing in the final rule that these validated cooking instructions may appear anywhere on the product label.

FSIS proposed to use the January 1, 2016, uniform compliance date as the effective date of this final rule (79 FR 34597). However, according to the uniform compliance date final rule,[3] if any food labeling regulation involves special circumstances that justify a compliance date other than the uniform compliance date, FSIS will determine an appropriate compliance date and will publish that compliance date in the rulemaking (79 FR 71008). Because of the potential public health benefits of this rule, the effective date of this rule will be May 17, 2016. Had the final rule published on December 31, 2014, the effective date would have been January 1, 2016, according to the uniform compliance date for food labeling regulations final rule. By establishing a compliance date of May 17, 2016 FSIS is providing establishments with the same 365-day compliance period that they would have had if the final rule had published on December 31, 2014. Therefore, this rule will not be subject to the 2018 uniform compliance date for new meat and poultry product labeling regulations. In addition, FSIS will delay enforcing the labeling requirements for beef products with added solutions[4] until the effective date of this final rule.

Finally, after consideration of the difference between branded (sold in multiple stores) and private labels (sold in only stores with the label name), FSIS reevaluated the label design costs to industry. Based on this analysis, FSIS increased estimated costs associated with the final rule. Even so, FSIS predicts the final rule to have a positive net benefit. In Table 1 (below), FSIS estimates the quantifiable benefits, costs, and net benefits of the final rule.

TABLE 1—SUMMARY OF ESTIMATED COSTS AND BENEFITS

Estimated Quantified Benefits, Costs, and Net Benefits[a]	
Benefits[b]	$688,286. ($430,178 to $1,606,000).
Costs[c]	$476,932 to $784,053.
Net Benefits	−$95,768 to $211,353. (−$357,163 to $3,022,369).
Non-Quantified Benefits and Costs	
Benefits	• Avoided pain and suffering associated with prevented non-fatal foodborne illnesses. • Increased producer surplus to producers who sell intact beef or other meats consumers may substitute for mechanically-tenderized beef. • Cost savings accruing to food service establishments that will more readily obtain the information on whether beef product has been mechanically tenderized, which will better enable them to comply with State law.
Costs	• Cost to validate cooking instructions. • Loss in producer surplus to producers who sell mechanically tenderized beef. • Loss in consumer surplus to consumers who start cooking their beef to a higher temperature, which they prefer less than cooking rare. • Loss in consumer surplus to consumers who either spend more time cooking or wait longer to eat in food service settings. • Loss in consumer surplus to consumers who might substitute other meats or other cuts of meat, which they prefer less. • Time cost associated with revised cooking procedures and training on thoroughly cooking mechanically tenderized beef products in the food service industry.

[a] Annualized over 10 years at a 7 percent discount rate.
[b] Assumes that on the low end, 15% of consumers and food service providers will use validated cooking instructions and using the lower bound of the credibility interval from Scallan while on the high end, 56% of consumers and food service providers and using the upper bound of the credibility interval from Scallan will use validated cooking instructions, with an average estimate of 24% for consumers and 24% for food service providers.
[c] The upper and lower bound estimated costs fall to $407,946 and $670,643 when annualized with a 3 percent discount rate.
Source: FSIS Policy Analysis Staff.

Background

As explained in the proposed rule, consumers consider product tenderness to be a key factor when purchasing meat products. Thus, the tenderness of a roast or steak is a key selling point for the meat industry (78 FR at 34591). Mechanically tenderized product is product that has been pierced with a set of needles or blades, which breaks up muscle fiber and tough connective tissue, resulting in increased tenderness. As was also explained in the proposed rule, such product may also be injected with a solution or marinade.

In 2009, the Safe Food Coalition sent a petition to the Secretary of Agriculture to request, among other issues, regulatory action to require that the labels of mechanically tenderized beef products disclose the fact that the products have been mechanically tenderized. The petition stated that, (1) consumers and restaurants do not have sufficient information to ensure that these products are cooked safely because FSIS does not provide recommended cooking temperatures for mechanically tenderized products, (2) the recommended cooking temperatures for intact products are not appropriate for non-intact, mechanically tenderized products, and (3) a labeling requirement for mechanically tenderized products is critical for consumers and retail outlets, so that they have the information necessary to safely prepare these products.

In June 2010, the Conference for Food Protection (CFP) petitioned[5] FSIS to issue a mandatory labeling provision for

[3] On December 1, 2014, FSIS issued a final rule that established January 1, 2018, as the uniform compliance date for new meat and poultry product labeling regulations that are issued between January 1, 2015 and December 31, 2016 (79 FR 71007).

[4] 79 FR 79044; Dec. 31, 2014.

[5] The incoming petition is available on FSIS's Web site at *http://www.fsis.usda.gov/wps/wcm/connect/7da02e44-712f-4779-aa10-fb1760493261/Petition_CFP_071710.pdf?MOD=AJPERES.*

mechanically tenderized beef that would require labels to specify that a cut has been mechanically tenderized. The petition stated that mechanically tenderized beef, especially when frozen, could be mistakenly perceived by consumers to be a whole, intact muscle cut. The petition asserted that without clear labeling, food retailers and consumers do not have the information necessary to prepare these products safely. According to the petition, if labeling does not indicate that the product is mechanically tenderized, consumers are not aware of the potential risk created when these products are less than fully cooked. The petition stated that mandatory labeling of these products would reduce the number of foodborne illnesses in the United States. In April 2014, CFP expressed their support of FSIS moving forward with final rulemaking at a meeting for the Conference of Food Protection.

Published research suggests that pathogens can be translocated from the surface of mechanically tenderized beef products to the interior of the products during processing because of the piercing of the beef by the needle or blade.[6] The potential for this translocation of pathogens suggests that the interior of mechanically tenderized beef would have to be more fully cooked than a piece of intact beef with a similar amount of pathogens on the surface.[7] Mechanically tenderized meat products are widely available to consumers in the marketplace (78 FR at 34591).

Since 2000, the Centers for Disease Control and Prevention (CDC) has received reports of six outbreaks determined to be attributable to needle- or blade-tenderized beef products prepared in restaurants and consumers' homes. These outbreaks included a total of 176 *Escherichia coli* (*E. coli*) O157:H7 cases that resulted in 32 hospitalizations and 4 cases of hemolytic uremic syndrome (HUS).[8]

In addition, in 2012, 18 cases of food-borne illness caused by *E. coli* O157:H7 were reported as part of a Canadian outbreak. During the food safety investigation associated with the outbreak, it was determined that a few cases were likely associated with the consumption of mechanically tenderized beef which had been tenderized at the retail level.[9] On May 21, 2014, the Canadian Food Inspection Agency announced that it was amending its regulations to mandate Canadian establishments that produce mechanically tenderized beef to label those products as ''mechanically tenderized'' and provide cooking instructions. The Canadian regulations were effective on August 21, 2014, and are consistent with this final rule.

Proposed Regulatory Requirements

The Federal Meat Inspection Act (FMIA) gives FSIS broad authority to promulgate rules and regulations necessary to carry out its provisions (21 U.S.C. 621). To prevent meat or meat food products from being misbranded, the meat inspection regulations require that the labels of meat products contain specific information and that such information be displayed as prescribed in the regulations (9 CFR part 317). Under the regulations, the principal display panel on the label of a meat product must include, among other information, the name of the product.

In proposed 9 CFR 317.2(e)(i), FSIS proposed new requirements for raw or partially cooked needle- or blade-tenderized beef products, including beef products injected with a marinade or solution. FSIS proposed that the product name for these beef products include the descriptive designation ''mechanically tenderized'' and an accurate description of the beef component.

In proposed 9 CFR 317.2(e)(3)(ii), FSIS proposed that the print for all words in the product name be in the same style, color, and size and on a single-color contrasting background.

In proposed 9 CFR 317.2(e)(3)(iii)), FSIS proposed that the labels of raw and partially cooked needle- or blade-tenderized beef products destined for household consumers, hotels, restaurants, or similar institutions include validated cooking instructions. FSIS also proposed that the validated cooking instructions include the cooking method, inform consumers that these products need to be cooked to a specified minimum internal temperature, state whether the product needs to be held for a specified time at that temperature or higher before consumption to ensure destruction of potential pathogens throughout the product, and contain a statement that the internal temperature should be measured by a thermometer.

FSIS explained in the proposed rule that should the rule be implemented, raw or partially cooked beef products subject to this rule whose labels do not include the descriptive designation ''mechanically tenderized,'' and such products destined for household consumers, hotels, restaurants, or similar institutions whose labels do not include validated cooking instructions, would be misbranded because the product labels would be false or misleading, because the products would be offered for sale under the name of another food, and because the product labels would fail to bear the required handling information necessary to maintain the products' wholesome condition (21 U.S.C. 601(n)(1), 601(n)(2), and 601(n)(12)) (78 FR 34595).

FSIS also announced in the proposal that it had posted on its Web site draft guidance on developing validated cooking instructions for mechanically tenderized product.

Final Rule

FSIS is finalizing the proposed regulations with minor changes to provide additional clarification and flexibility. In response to comments, this final rule requires the descriptive designation ''mechanically tenderized'' or ''needle tenderized'' be used on raw or partially cooked needle tenderized beef products and the descriptive designation ''mechanically tenderized'' or ''blade tenderized'' be used on raw or partially cooked blade tenderized beef products. By permitting the terms ''needle tenderized'' and ''blade tenderized'' to be used as the descriptive designation, FSIS is providing additional flexibility to establishments to use more specific terms regarding the method of mechanical tenderization as part of the product name.

This final rule requires a descriptive designation as part of the product name, not as part of the common or usual name of the product. Thus, for a steak that has been tenderized, the common or usual name would be ''steak.'' It would not be ''mechanically tenderized steak.'' However, the descriptive designation needs to be in close proximity to the common or usual name. The descriptive designation may be above, below, or next to the rest of the product name (without intervening text or graphics) on the principal display panel. In response to comments on the proposed rule on mechanically tenderized beef products and on the proposed rule for raw meat and poultry

[6] Luchansky, JB, Phebus RK, Thippareddi H, Call JE 2008. Translocation of surface-inoculated Escherichia coli O157:H7 into beef subprimals following blade tenderization. *J. Food Prot.* 2008 Nov.; 71(11): 2190–7.

[7] Sporing, Sarah B. 1999. *Escherichia coli* O157:H7 Risk Assessment for Production and Cooking of Blade Tenderized Beef Steak. Thesis. Kansas State University.

[8] Compilation of USDA–FSIS Data, 2010.

[9] Catford, A., Lavoie, M., Smith, B., Buenaventura, E., Couture, H., Fazil, A., and J.M. Farber.2013. ''Findings of the Health Risk Assessment of *Escherichia coli* O157 in Mechanically Tenderized Beef Products in Canada.'' *Int. Food Risk Anal. J.* 3:2013.

products containing added solutions (76 FR 44855), this final rule provides that the print for all words in the product name and descriptive designation on raw or partially cooked mechanically tenderized products must appear in a single easy-to-read type style and color and on a single-color contrasting background. In addition, the final rule allows additional flexibility by providing that the print may appear in upper and lower case letters, with the lower case letters not smaller than ⅓ the size of the largest. These requirements are consistent with those in the final rule for raw meat and poultry products containing added solutions.[10]

In response to comments, the final rule also clarifies that validated cooking instructions may appear anywhere on the product label and that a descriptive designation will not be required for mechanically tenderized beef products destined for a full lethality treatment at an official establishment.

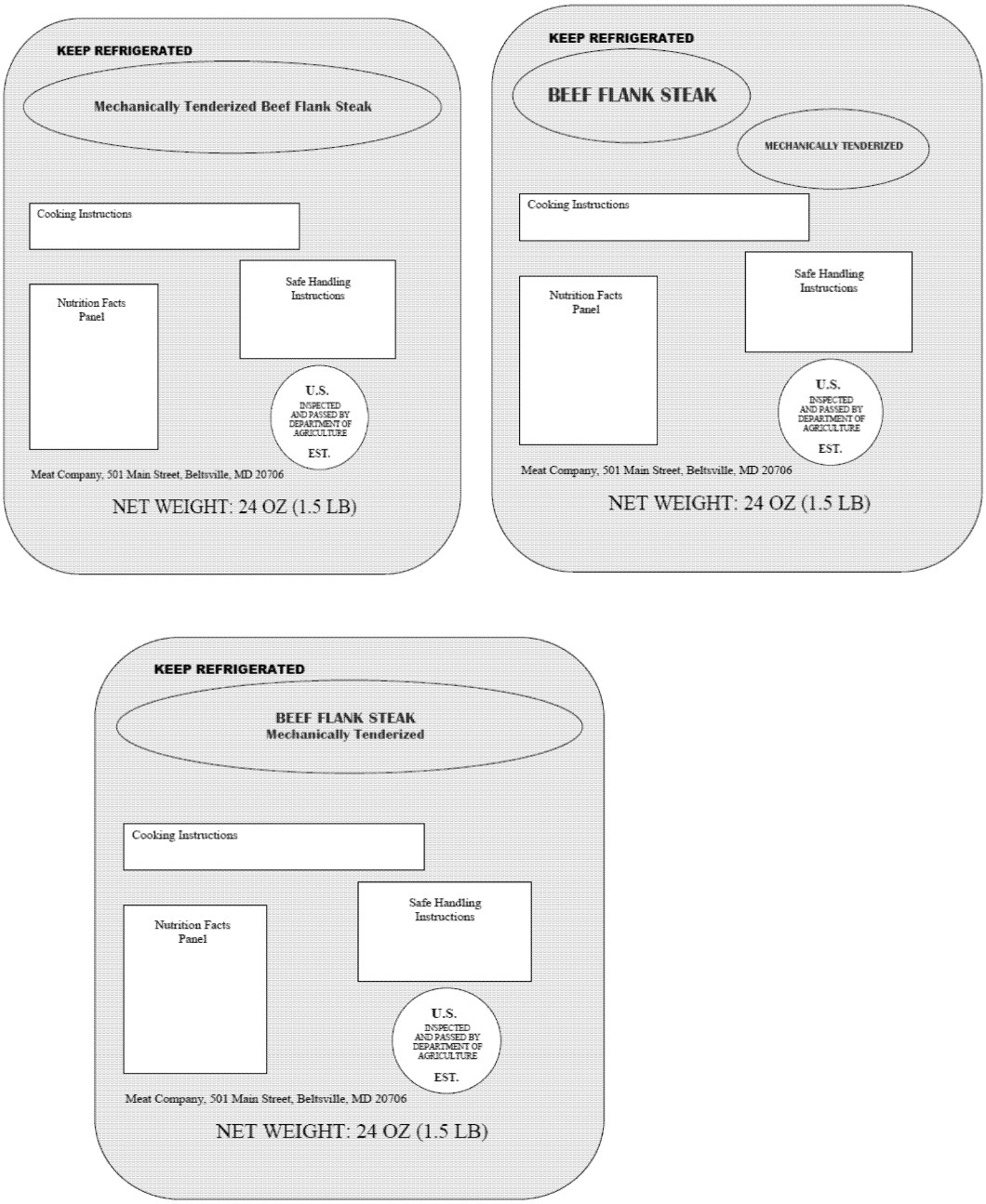
FSIS has carefully considered the available information on mechanically tenderized beef and has concluded that, without specific labeling, consumers and industry may be purchasing and preparing raw or partially cooked mechanically tenderized beef products without knowing that these products have been needle- or blade-tenderized. Because illnesses could be reduced if the Agency required more specific labeling, the final rule requires the product name of raw or partially cooked, mechanically tenderized beef products include the name of the beef component and a descriptive designation that the product has been ''mechanically tenderized,'' ''needle tenderized,'' or ''blade tenderized,'' unless the product is destined to be fully cooked or to receive another full lethality treatment in an official establishment. The descriptive designation will provide household consumers, official establishments, restaurants, and retail stores with the information they need to distinguish a cut of beef that is an intact, non-tenderized product, from a non-intact, mechanically tenderized product.

Based on the requirements in 9 CFR 317.2(c)(1), all of this information will need to appear on the principal display panel of the immediate container. FSIS is requiring that the descriptive designation be a part of the product name so that the statement is prominently placed on the label and with such conspicuousness as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use (see 21 U.S.C. 601(n)(6)).

BILLING CODE 3410–DM–P

[10] Except that the applicability date for raw meat and products containing added solutions that prescribes that the descriptive designation appear with the lower case letters not smaller than ⅓ the size of the largest letter will be delayed until January 1, 2018.

Examples of labels for mechanically tenderized beef product



BILLING CODE 3410–DM–C

Note: Validated cooking instructions may appear anywhere on the label.

The descriptive designation will only apply to raw or partially cooked beef products that have been needle-tenderized or blade-tenderized, including beef products injected with marinade or solution. Other tenderization methods, such as pounding and cubing, change the appearance of the product, putting consumers on notice that the product is not intact. Moreover, most establishments already label cubed products as such.

FSIS is requiring the terms ''mechanically tenderized,'' ''needle tenderized,'' or ''blade tenderized'' because they accurately and truthfully describe the nature of the product. These terms also clearly differentiate needle- or blade-tenderized beef products from non-tenderized, intact beef products.

As explained in the proposed rule, under current regulations, to prevent raw and partially cooked meat products from being misbranded, the labels of all meat products, including those that have been mechanically tenderized, must bear safe handling instructions as prescribed in 9 CFR 317.2(l). Although the safe handling instructions in the regulations include ''cook thoroughly,'' the regulations do not require that these instructions specify a dwell time or internal temperature parameters necessary to ensure that the product is fully cooked.

The safe preparation of this product requires that consumers know to handle the mechanically tenderized product differently than product in which there

is potential for transfer of any exterior contamination into the interior of the beef product.

Some consumers of beef products consider a product to be thoroughly cooked product even if it has been prepared to a degree of doneness that is not sufficient for safety.[11] [12] [13] Moreover, because mechanically tenderized beef products have the same appearance as intact beef products, household consumers, hotels, restaurants, and similar institutions may incorrectly assume that products that in fact have been mechanically tenderized products can be prepared similarly to intact products (*i.e.,* that it is okay to cook them to be ''rare'' or ''medium-rare''). Thus, in addition to a descriptive designation that identifies that needle- or blade-tenderized beef products have been mechanically tenderized, under this final rule, FSIS is requiring that labels of raw and partially cooked needle- or blade-tenderized beef products destined for household consumers, hotels, restaurants, and similar institutions include cooking instructions that have been validated to support claims that potential pathogens throughout the product would be destroyed.

FSIS is requiring that the validated cooking instructions include, at a minimum: (1) The method of cooking; (2) a validated minimum internal temperature that would destroy pathogens throughout the product; (3) a statement as to whether the product cooked in the manner described also needs to be held for a specified time at the specified temperature or higher before consumption; and (4) instruction that the internal temperature should be measured by use of a thermometer. The cooking instructions included on the label should be practical and easily followed by consumers. In response to comments discussed below, the final rule provides that validated cooking instructions may appear anywhere on the product label.

[11] Lorenzen, C.L., T.R. Neely, R.K. Miller, J.D.Tatum, J.W. Wise, J.F. Taylor, M.J. Buyck, J.O. Reagan, and J.W. Savell. 1999. ''Beef Customer Satisfaction: Cooking Methods and Degree of Doneness Effects on the Top Loin Steaks.'' *J. Animal Science* 77:637–644.

[12] Savell, J.W., Lorenzen, C.L., Neely, T.R., Miller, R.K., Tatum, J.D., Wise, J.W., Taylor, J.F., Buyck, M.J., Reagan, J.O. 1999. ''Beef Customer Satisfaction: Cooking Methods and Degree of Doneness Effects on the Top Sirloin Steaks.'' *J. Animal Science* 77:645–652.

[13] Neely, T.E., Lorenzen, C.L., Miller, R.K., Tatum, J.D., Wise, J.W., Taylor, J.F., Buyck, M.J., and Savell, J.W. 1999. ''Beef Customer Satisfaction: Cooking Method and Degree of Doneness Effects on the Top Round Steak''. *J. Animal Science* 77:653–660.

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Consistent with the regulation on Hazard Analysis and Critical Control Point (HACCP) validation (9 CFR 417.4), to validate the cooking instructions, the establishment will be required to obtain scientific or technical support for the judgments made in designing the cooking instructions, and in-plant data to demonstrate that it is, in fact, achieving the critical operational parameters documented in the scientific or technical support. Just as establishments have to validate their HACCP plans' adequacy in controlling food safety hazards identified during the hazard analysis, so too, under this final rule, establishments that produce raw or partially cooked mechanically tenderized beef products will have to validate their recommended cooking instructions. The scientific support would need to demonstrate that the cooking instructions provided can repeatedly achieve the desired minimum internal temperature and time at that temperature and would need to support that the product is fully cooked to destroy pathogens present in the product. The in-plant data would need to demonstrate that the establishment is, in fact, achieving the critical operational parameters documented in the scientific or technical support. For additional information on validation see the **Federal Register** notice on HACCP Systems Validation (77 FR 27135; May 9, 2012).[14]

In response to comments, FSIS has revised its guidance for developing validated cooking instructions for mechanically tenderized products. The Agency has posted the revised guidance on its Significant Guidance Documents Web page. This guidance represents current FSIS thinking. Establishments could collect their own scientific data to support the cooking instruction, use a study from an outside source, or use the revised guidance provided by FSIS. An establishment could use the recommended cooking instructions from the revised guidance on its product labels, without having to conduct additional experiments or provide any further scientific support, if the products it is producing are similar to those in the guidance.

If establishments are unable to use the specific examples in the revised guidance (*e.g.,* because the product is a different thickness or is to be cooked using a method different from one previously studied), the revised guidance also contains instructions on how to develop such support.

[14] Available at *http://www.fsis.usda.gov/wps/wcm/connect/d000cb67-23bc-4303-8f7b-71dcba5e7cd7/2009-0019.pdf?MOD=AJPERES.*

Summary of and Response to Comments

In the proposal, FSIS requested comment on specific issues: How it defined ''mechanically tenderized,'' whether the definition should be incorporated into the regulations, whether the term should include products that have been vacuum tumbled or formed, whether the term would be understood by consumers, on how the proposed labeling changes would impact restaurants and other food service operations, and on the cost estimates outlined in the proposal. FSIS received 122 comments in response to these and other issues in the proposed rule. A majority of the comments (approximately 75) were form letters submitted by individuals. The remaining comments were from individuals, consumer advocacy groups, organizations representing the meat industry, meat processors, retail trade associations, and an organization representing food and drug officials.

FSIS did not receive any comments on whether it should require fully cooked needle- or blade-tenderized beef products to have the descriptive designation on their labels, on how food service workers will likely respond to the proposed labeling changes, on the number of cuts per establishment that would require validated cooking instructions, or on estimated costs for developing validated cooking instructions.

FSIS has summarized and responded to the relevant issues raised by commenters below.

A. Broadly Opposed to the Proposal

Comment: An individual stated that all of the proposed changes are unnecessary because the safe handling instructions required in 9 CFR 317.2(l) clearly state that raw beef products, including those that are tenderized, must be cooked thoroughly before being consumed. As an alternative to the proposed labeling changes, several organizations representing the meat industry suggested that FSIS focus its resources on improving the safe-handling instructions.

Response: FSIS disagrees that the changes are unnecessary. As FSIS stated in the preamble to the proposed rule, the literature suggests that many consumers are aware of the safe handling instruction labels (see 78 FR at 34592). However, the same literature also suggests that only a portion of consumers reported reading these instructions on raw meat product labels and changing their meat preparation

methods because of the labels.[15] Furthermore, although the required safe-handling instructions include ''cook thoroughly'' in raw and partially cooked beef products, the regulations do not require that these instructions specify the dwell time or internal temperature parameters required to support that the product is fully cooked. In addition, despite the safe handling instructions to ''cook thoroughly,'' consumers, restaurants, and retail stores do not always cook these products fully by using a temperature-and-time combination sufficient to destroy harmful bacteria that may be in the product. They may incorrectly assume that it is safe to cook these products ''rare'' or ''medium-rare.'' CDC and other governmental investigators reported that failure to fully cook a mechanically tenderized raw or partially cooked beef product was likely a significant contributing factor in several of the outbreaks.[16] [17] [18] In addition, consumer preference for steaks that are not thoroughly cooked [19] along with the time span of the illness reports suggests undercooking was likely a significant contributing factor in the other investigations as opposed to post-cooking cross-contamination in which illnesses would be more likely to occur at the same time. FSIS has, therefore, determined that labeling to indicate that the beef product is mechanically tenderized, along with validated cooking instructions, is necessary to help inform consumers and industry of a key feature of the product and to instruct them that such products need to be thoroughly cooked.

In addition, in January, 2014, FSIS sought input from the National Advisory Committee on Meat and Poultry Inspection [20] to fully explore whether there is a need for enhancing the safe food handling label on meat and poultry packages (78 FR 77643; Dec. 24, 2013). The Committee recommended that FSIS pursue changes to the existing safe handling instructions. FSIS has initiated a project to research how we might modify the current safe-handling instruction requirements to improve consumer food safety behaviors.

Comment: Several comments stated that the proposed labeling changes will be ineffective in influencing consumer behavior to reduce relative risk. Moreover, an organization representing meat and poultry processors and a trade association stated that the Agency failed to provide any data to support that the proposed labeling changes can or will positively impact public health; thus, creating an unnecessary burden on industry.

Response: FSIS recognizes that not all consumers will change their behavior in response to the presence of the descriptive designation ''mechanically tenderized,'' ''needle tenderized,'' or ''blade tenderized,'' and validated cooking instructions on the product label. However, FSIS disagrees that the labeling changes will not positively impact public health. Public health is characterized on a population level. As discussed below, on the basis of available studies on the impacts of food product labels on consumer behavior, FSIS used 24 percent as the primary estimate for the impact of labels on consumer behavior. Therefore, FSIS estimates that 24 percent of consumers that previously cooked mechanically tenderized beef to a lower temperature will change their behavior and cook that product to the endpoint temperature that appears in the cooking instructions, which is equivalent to 210 illnesses averted or prevented per year, with a range of 131 to 489 (See Table 5).

B. Defining ''Mechanically Tenderized''

Comment: An organization representing the meat industry and a retail trade association characterized the Agency's proposed use of the term ''mechanically tenderized'' as overly broad and inaccurate. Both commenters stated that adding solutions by needle injection does not ''mechanically tenderize'' the product. A trade association requested that vacuum-tumbled products not be considered ''mechanically tenderized.''

Consumer organizations requested that ''mechanically tenderized'' product include vacuum-tumbled, vacuum-marinated, marinade-injected, and enzyme-formed beef products. An individual and a meat processor requested that mechanically tenderized product include products that are vacuum-tumbled because they stated the potential health risk to consumers is similar to that for needle- or blade-tenderized beef products. One consumer advocacy group remarked that, although enzyme-formed beef is now required to be labeled ''formed,'' the designation does not inform the consumer on how the meat should be prepared or on the higher risk of exposure to pathogens that these products present.

Several meat processors and trade associations stated that use of the descriptive designation ''mechanically tenderized'' on the label will be misunderstood by consumers as a negative term and, therefore, may discourage customers from purchasing such beef products, resulting in a negative economic impact to small businesses. In addition, several organizations representing the meat industry requested that FSIS conduct targeted consumer research to determine whether the public perceives the descriptive designation ''mechanically tenderized'' as negative before finalizing the proposed changes.

As alternatives to ''mechanically tenderized,'' commenters suggested ''tenderized and packaged,'' ''tenderized,'' ''marinated,'' ''injection marinated,'' ''solution enhanced,'' ''cubed,'' and ''blade tenderized.''

Response: After review and consideration of the alternative descriptive designations provided by commenters, FSIS is finalizing the proposed regulations with minor changes. FSIS has concluded the descriptive designations ''mechanically tenderized,'' ''needle tenderized,'' and ''blade tenderized'' accurately and truthfully describe the nature of the product. Additionally, these term clearly and completely identify the preparation process that the product underwent, as required by 9 CFR 317.2(e). FSIS has previously described mechanically tenderized beef products in a similar manner, notably in its **Federal Register** notice, HACCP Plan Reassessment for Mechanically Tenderized Beef Products (May 26, 2005; 70 FR 30331). Moreover, comments and other data do not support that the descriptive designations

[15] Yang, *et al* (1999) show that 15% of consumers changed their behavior based on reading safe handling instruction labels. (''Evaluation of Safe Food-Handling Instructions on Raw Meat and Poultry Products.'' *J of Food Protect.* 63: (1321–1325.)

[16] Swanson, L.E., Scheftel, J.M., Boxrud, D.J., Vought, K.J., Danila, R.N., Elfering, K.M., and Smith, K.E. 2005. ''Outbreak of *Escherichia coli* O157:H7 infections associated with nonintact blade-tenderized frozen steaks sold by door-to-door vendors.'' *J. Food Prot* 68: (1198–1202).

[17] Haubert, N., Cronquist, A., Parachini, S., Lawrence, J., Woo-Ming, A., Volkman, T., Moyer, S., Watkins, A. 2006. Outbreak of *Escherichia coli* O157:H7 Associated with Consuming Needle Tenderized Undercooked Steak from a Restaurant Chain. Presented at the International Conference on Emerging and Infectious Diseases. March 19–22, 2006. Atlanta, GA.

[18] Culpepper W, Ihry T, Medus C, Ingram A, Von Stein D, Stroika S, Hyytia-Trees E, Seys S, Sotir MJ. 2010. Multi-state outbreak of *Escherichia coli* O157:H7 infections associated with consumption of mechanically-tenderized steaks in restaurants—United States, 2009. Presented at International Association for Food Protection; August 1–4, 2010; Anaheim, CA.

[19] Reicks, A.L., Brooks, J.C., Garmyn, A.J., Thompson, L.D., Lyford, C.L., Miller, M.F. 2011. ''Demographics and beef preferences affect consumer motivation for purchasing fresh beef steaks and roasts.'' *Meat Science.* 87: 403–411.

[20] For more information on the National Advisory Committee on Meat and Poultry Inspection, visit *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/advisory-committees/nacmpi.*

''mechanically tenderized,'' ''needle tenderized,'' or ''blade tenderized'' would be misunderstood by consumers, restaurants, retail stores, and official establishments or that the other alternatives would be better understood by these parties. Furthermore, FSIS's definition of ''mechanically tenderized'' for raw and partially cooked beef products is consistent with that contained in the Canadian *Food and Drug Regulations*.[21] To provide flexibility, FSIS is requiring the terms ''needle tenderized'' or ''mechanically tenderized'' be used as the descriptive designation for needle-tenderized beef products and the terms ''mechanically tenderized'' or ''blade tenderized'' be used as the descriptive designation for blade-tenderized beef products. The terms ''needle tenderized'' and ''blade tenderized'' merely provide more specific information on the mechanical methods used to tenderize the product. The terms ''needle tenderized'' and ''blade tenderized'' are not interchangeable. Only blade-tenderized product will be allowed to bear that descriptive designation, and only needle-tenderized product will be allowed to bear that descriptive designation. ''Mechanically tenderized'' could be used on either needle- or blade-tenderized product.

Even though vacuum-tumbled or enzyme-formed beef products are processed in a manner that may introduce pathogens (if present) below the product's surface, this final rule will not apply to them. FSIS regulations (9 CFR 317.8(b)(39)) already require labeling for meat products that are formed or re-formed with an enzyme binder as part of the product name, *e.g.,* ''Formed Beef Tenderloin.'' As such, formed beef products are already labeled in a manner that distinguishes them from other products. In addition, FSIS has concluded that there is not sufficient data to understand whether the risk that pathogens may be introduced into product as a result of vacuum tumbling or enzyme formed beef product is similar to that associated with needle- and blade-tenderized beef.

As stated in the preamble of the proposal, FSIS will conduct a public education campaign to explain the significance of the terms ''mechanically tenderized,'' ''needle tenderized,'' and ''blade tenderized'' to consumers (78 FR at 34593). Thus, FSIS disagrees that additional consumer research is needed before moving forward with a final rule.

C. How the New Information Appears on the Label

Comment: Several consumer advocacy groups requested that the descriptive designation appear on the label in distinguishing typeface. Other consumer advocacy groups suggested that the descriptive designation be added to the package as a brightly-colored sticker, separate from the existing label, placed on the front of the packaging. Several meat processors and organizations representing the meat industry requested that the descriptive designation be permitted to appear on the label in a smaller font size than that of the product name. A trade association opposed the addition of the descriptive designation to the product name because it has found that consumers pay the least attention to tenderization information when it is included in the product's name. Noting that other FSIS labeling requirements to enhance food safety (for example, the safe handling instructions) effectively convey useful information that is not part of the product name, a meat processor and several trade associations requested that, rather than in the product name, the descriptive designation be permitted to appear elsewhere on the label.

Response: To make the descriptive designation readily apparent on the label but provide flexibility and address the comments discussed above, FSIS is requiring that the print for all words in the product name and descriptive designation appear in a single easy-to-read type style and color and on a single-color contrasting background. In addition, the print may appear in upper and lower case letters, with the lower case letters not smaller than ⅓ the size of the largest letter.

Establishments or retail stores will be permitted to add the required information to existing label designs, or they can apply a separate sticker with the required information to existing labels. Regardless, the product name must contain the term ''mechanically tenderized,'' ''needle tenderized,'' or ''blade tenderized'' as an accurate description of the beef component of the product.

The labels of raw and partially cooked mechanically tenderized beef products as required in this final rule will be considered to be generically approved. The labels will not have to be submitted to FSIS for approval prior to their use, provided that they meet the requirements in this rule, display all mandatory features in a prominent manner in compliance with part 317, and are not otherwise false or misleading in any particular manner (9 CFR 412.2).

Comment: A retail trade association requested that FSIS provide options for the descriptive designation for those labels that are under a certain size (*e.g.,* if a label has less than or equal to six (6) square inches of available printing).

Response: FSIS is not aware of any raw or partially cooked mechanically tenderized beef product marketed in a package too small (*i.e.,* with less than six square inches of available labeling space) to accommodate the requirements of this final rule.

D. Mandatory Labeling for Restaurants

Comment: So that restaurant patrons can make informed decisions as to how their beef product should be prepared, several individuals requested that restaurants be required to disclose on their menus when products are made from mechanically tenderized beef. A trade association recommended that FSIS align any proposed labeling requirements for restaurants with the Food and Drug Administration (FDA). A consumer advocacy group urged FSIS, in partnership with retail or restaurant associations, to develop an ''information system'' targeted at those preparing mechanically tenderized beef products served at restaurants.

Response: FSIS expects that, by requiring the use of the descriptive designation ''mechanically tenderized,'' ''needle tenderized,'' or ''blade tenderized,'' and validated cooking instructions, food service personnel will be able to identify mechanically tenderized beef as such and to safely prepare the product using the cooking instructions provided on the label.

Food service personnel should contact their local or State health department for information on the rules and regulations governing the preparation of food in restaurant, retail, or institutional settings.

FSIS plans to share issues raised in comments received on restaurant menu labeling in response to the proposed rule with FDA.

E. Estimated Costs and Benefits of the Proposed Rule

Comment: An industry trade association stated that FSIS failed to assign a dollar value to many of the purported benefits and costs discussed in the proposed rule.

Response: FSIS made every effort to quantify all known costs and benefits of the proposed rule. However, because of the uncertainty in determining producer

[21] Section B.01.001(1) of the Canadian *Food and Drug Regulations* defines ''mechanically tenderized beef'' as uncooked solid cut beef that is prepared in either of the following ways: (*a*) The integrity of the surface of the beef is compromised by being pierced by blades, needles or other similar instruments; or (*b*) the beef is injected with a marinade or other tenderizing solution (P.C. 2014–478; May 1, 2014).

and consumer response to the proposed rule, FSIS acknowledges that it was unable to monetize some potential costs and benefits. FSIS did not forecast, nor did it receive data to quantify, in the final rule the loss to producers that sell mechanically tenderized beef products, the loss to consumers when cooking the products to a higher temperature, the loss to consumers who may substitute products that they may like less than mechanically tenderized products because of cooking the mechanically tenderized beef product to a higher temperature, or the loss to food service providers that change their processes.

Comment: Several meat processors and organizations representing the meat industry stated that FSIS underestimated the costs to industry to comply with the proposed labeling requirements.

Response: FSIS based the proposal's mid-point label design modification costs estimate ($310 per label) on the most detailed study available on the costs associated with the labeling of consumer products, the March 2011 FDA report.[22] However, after consideration of the differences between branded and private labels, FSIS updated the cost estimates after determining that 60 percent of the private label modifications would be uncoordinated changes. The cost for a minor uncoordinated label is $4,380 per label (with a range of $2,417 and $7,330), an increase from $310 per label in the proposal estimate. Even with the increased estimate, FSIS predicts the final rule to have a positive net benefit (see Table 5).

In addition, the effective date allows establishments time to use existing labels and will, therefore, result in minimal loss of inventory of labels.

F. High Pressure Processing

Comment: An individual requested that mechanically tenderized beef subjected to High Pressure Processing (HPP) be exempted from the mandatory labeling requirements outlined in the proposal.

Response: Any mechanically tenderized beef product treated at an official establishment with an intervention or process, including HPP, that has been validated to achieve at least a 5-log reduction for *Salmonella* and Shiga Toxin-producing *E. coli* (STEC) organisms (including *E. coli* 0157:H7) would not be subject to the requirements in this final rule because it has received a full lethality treatment.

In response to this comment, FSIS has modified the proposed codified language (9 CFR 317.2(e)(3)(i)) to clarify that a descriptive designation will not be required on mechanically tenderized beef products destined to receive a full lethality treatment at an official establishment.

G. Validated Cooking Instructions/ Associated Guidance

Comments: According to commenters, consumers may serve the cooked, mechanically tenderized products without the benefit of a stand time, thereby becoming vulnerable to foodborne illness. Therefore, several comments urged FSIS to require cooking instructions with an endpoint temperature of 160 degrees Fahrenheit. Many comments requested that the method of cooking not appear within the cooking instructions, to prevent confusion among consumers. Likewise, rather than requiring the four elements proposed, several organizations representing the meat industry and a retail trade association stated that the validated cooking instructions should be required to include only two elements—an internal temperature at which pathogens can effectively be destroyed and the recommended use of a meat thermometer to verify this temperature.

Response: FSIS disagrees that the inclusion of the method of cooking within the cooking instructions will confuse consumers. Based on the Agency's experience addressing questions from consumers and based on consumer information from outbreak investigations, FSIS has concluded that the most explicit way to inform consumers as to how to prepare a product that is safe for consumption is to include the cooking method by which the endpoint temperature is achieved within the cooking instructions. Consistent with HACCP requirements, FSIS is providing establishments the flexibility to design cooking instructions. However, in response to comments from consumer groups, FSIS revised its compliance guidance to include a recommendation that if establishments use one of the temperature and time combinations from the FSIS Guidance on Safe Cooking of Non-Intact Meat Chops, Roasts, and Steaks [23] with a temperature less than 145 degrees Fahrenheit and a rest time longer than three minutes (for example, 144 degrees Fahrenheit for four minutes, 143 degrees Fahrenheit for five minutes), then they should consider whether it is practical for consumers to achieve the longer rest time.

The first draft of the compliance guideline for validating cooking instructions recommended establishments consider, among other factors, the state of the product at the start of cooking (*e.g.,* frozen vs. refrigerated vs. room temperature), product thickness, type of cut, rotation of product, method of cooking to include a cold spot determination, and number and location of temperature measurement sites during cooking to ensure the cooking instructions consistently achieve the desired endpoint temperature. However, new research demonstrates the importance of turning steaks multiple times during cooking to ensure consumers consistently achieve the desired endpoint temperature throughout the steak.[24] Accordingly, FSIS has revised its guidance to recommend that establishments design cooking instructions for steaks to include turning the product at least twice.

Comment: Several commenters indicated that steaks are more commonly merchandised by weight in ounces, rather than by thickness.

Response: FSIS has revised its compliance guidance for validated cooking instructions to recommend that if an establishment packages products by portion size (*e.g.,* 10, 12, or 14 ounces), it should determine the variability in thickness of products packaged at that portion size and conduct the validation study using a product that represents the thickest product. The guidance now states that products from at least three lots should be measured to determine the worst case scenario.

Comment: Several consumer groups requested that FSIS recommend (within the guidance document) that the statement ''fully thaw before cooking'' appear on product labels. The commenters cited research that showed that frozen or partially thawed patties took longer to cook to the desired internal temperature of 160 degrees Fahrenheit than fully thawed patties.

Response: FSIS agrees that research has found that patties cooked from the frozen state take longer to achieve the target endpoint temperature than those

[22] Model to Estimate Costs of Using Labeling as a Risk Reduction Strategy for Consumer Products Regulated by the Food and Drug Administration, FDA, March 2011 (Contract No. GS–10F–0097L, Task Order 5).

[23] Available at *http://www.fsis.usda.gov/wps/wcm/connect/6d2ee97-3fd1-4186-b1e7-656e7a57beb2/time-temperature-table-042009.pdf?MOD=AJPERES.*

[24] Gill, C.O., Yang, X., Uttaro, B., Badoni, M. and Liu, T. 2013. ''Effects on survival of *Escherichia coli* O157:H7 in non-intact steaks of the frequency of turning over steaks during grilling.'' *Journal of Food Research.* 2(5): 77–89.

that have been thawed.[25] Moreover, research with patties has shown that temperatures tend to be more consistent across patties that are cooked from the thawed rather than the frozen state.[26] Thus, FSIS has revised its guidance to include a recommendation that the instructional statement ''fully thaw before cooking'' appear on the labels of mechanically tenderized beef products.

Comment: An organization representing the meat industry argued that there is not enough space on most mechanically tenderized beef product labels for the level of detail proposed for cooking instructions.

Response: As stated above, FSIS is not aware of any raw or partially cooked mechanically tenderized beef product marketed in a package too small to accommodate the requirements of this final rule, including those for validated cooking instructions. Based on this concern, FSIS has clarified in the final rule that validated cooking instructions may appear anywhere on the product label.

H. Risk of Illness Related to Mechanical Tenderization

Comment: Several meat processors and organizations representing the meat industry stated that the proposed changes are unnecessary and will not function to promote public health because the risk of illness associated with mechanical tenderization is ''very low,'' and ''generally equivalent'' to that associated with intact cuts of beef. To support these claims, several comments referenced the Agency's 2002 risk assessment, preliminary information provided by FSIS concerning its 2010 work, and the 2013 Canadian risk assessment. Many comments requested that FSIS conduct (and make available to the public) a comparative risk assessment for intact and non-intact beef using current data before finalizing the rule.

Response: The proposed and final benefit analysis used the recently published study by the Centers for Disease Control and Prevention that attributed foodborne illnesses by pathogens to general types of foods.[27] This study, along with reports of outbreaks attributable to mechanically tenderized products, allowed FSIS to base its estimate predicting 1,965 illnesses from mechanically tenderized products on analysis of recently observed illness data.

The FSIS attribution analysis is based on the latest published estimates of illness from the Centers for Disease Control and Prevention and for this pathogen product pair allows an estimate of the current risk of illness. No updates to this dataset became available between the proposed and final rule, and therefore, no corresponding changes to the attribution analysis were necessary. The details of this analysis are included in this final rule.

Comment: Several meat processors and organizations representing the meat industry stated that additional labeling is unnecessary because present day intervention strategies, like applying interventions directly before tenderization and following best manufacturing practices, have effectively lowered the risk associated with mechanically tenderized beef products since the outbreaks cited in the proposal.

Response: In the 11-year study cited in the proposed rule, outbreaks of *E. coli* O157:H7 accounted for 4,844 illnesses.[28] The Centers for Disease Control and Prevention estimate 63,153 illnesses from *E. coli* O157:H7 occur annually. Over an 11-year period this amounts to nearly 700,000 illnesses. Reported outbreaks account for less than 1 percent of these. Thus, the absence of outbreaks in the time after the period studied by Painter, *et al.,* which captured outbreaks through 2008, would not be sufficient to conclude that mechanically tenderized beef has ceased to pose a risk. Since 2008, an additional 2009 outbreak has been attributed to blade-tenderized steaks, which resulted in 10 hospitalizations and one death. Additionally, the 2013 Canadian risk assessment, cited by some commenters, reports a Canadian outbreak attributed to mechanically tenderized beef occurring in 2012. Therefore, data continue to support the need for the rule.

Comment: An organization representing the meat industry and a meat processor opposed the Agency's approach of combining mechanically tenderized product not containing added solutions with mechanically tenderized product injected with a marinade or solution, because, in their assessment, mechanically tenderized products injected with a solution pose a clearly different risk profile.

Response: Production of both mechanically tenderized product not containing added solutions and mechanically tenderized product injected with a marinade or solution involve piercing the surface of the product, which allows translocation of bacteria that may reside on the surface into the interior of the product. The 2013 Canadian risk assessment noted above includes both types of products in its analysis but does not distinguish between the two types in its reported results in which it concludes that the risk of illness from mechanically tenderized products is higher than for non-tenderized products. Therefore, FSIS concludes that its approach is consistent with available data.

I. Mandatory Labeling for Other Species

Comment: Several comments requested that FSIS require similar mandatory labeling for mechanically tenderized pork and poultry products.

Response: FSIS considered the option to amend the labeling regulations to include a new requirement for labeling all mechanically tenderized meat and poultry products. However, FSIS has concluded that there is not sufficient data on the production practices and risks of consuming mechanically tenderized poultry products or mechanically tenderized meat products, other than beef, to proceed with this option. For example, there have been no known outbreaks for mechanically tenderized poultry or non-beef products.

Implementation Issues

The final new descriptive designation requirement will apply to all raw or partially cooked needle- or blade-tenderized beef products going to retail stores, restaurants, hotels, or similar institutions or to other official establishments for further processing other than cooking. The final requirements for validated cooking instructions will apply to raw or partially cooked mechanically tenderized beef products destined for household consumers, hotels, restaurants, or similar institutions. If a second establishment repackages the product for household consumers, hotels, restaurants or similar institutions, the second establishment will be responsible for applying the validated cooking instructions to the

[25] Luchansky, J.B., Porto-Fett, A.C.S., Shoyer, B.A., Phillips, J., Chen, V., Eblen, D.R., Cook, V., Mohr, T.B., Esteban, E. and Bauer, N. 2013. ''Fate of Shiga Toxin-producing O157:H7 and non-O157:H7 *Escherichia coli* cells within refrigerated, frozen, or frozen then thawed ground beef patties cooked on a commercial open-flame gas or a clamshell electric grill.'' *Journal of Food Protection.* 76(9): 1500–1512.

[26] Berry, B.W. 2000. ''Use of infrared thermography to assess temperature variability in beef patties cooked from the frozen and thawed states.'' *Foodservice Research International.* 12(4): 255–262.

[27] Painter, J., R. Hoekstra, *et al.* 2013. ''Attribution of foodborne illnesses, hospitalizations, and deaths to food commodities by using outbreak data, United States, 1998–2008.'' *Emerg Infect Dis* 9(3): 407–415.

[28] Painter, J., R. Hoekstra, *et al.* 2013. ''Attribution of foodborne illnesses, hospitalizations, and deaths to food commodities by using outbreak data, United States, 1998–2008.'' *Emerg Infect Dis* 9(3): 407–415.

product label. If retail stores repackage the product, they will be required to include the descriptive designation and validated cooking instructions from the official establishment on the retail label.

Under the final rule, establishments or retail stores may add the required information to existing label designs, or they can apply a separate sticker with the required information to existing labels. Under the provisions for generic approval in 9 CFR 412.2(a)(1), the modifications made to the labels for needle- or blade-tenderized beef products from official establishments are generically approved.

To inform consumers that the nature of needle- or blade-tenderized beef is not the same as that of an intact cut of beef, to make them aware that the consequences of the tenderization process may include the intake of bacteria, and to assure consumers that these products can be prepared safely, FSIS plans to conduct consumer education and awareness efforts as part of its implementation strategy. The Agency will develop webinars and PowerPoint presentations for industry to assist establishments and retail facilities in complying with the new labeling requirements. FSIS staff will also be available to answer questions pertaining to the labeling of mechanically tenderized beef products.

When the rule becomes effective, FSIS inspection program personnel will verify that establishments meet the labeling requirements in this rule. FSIS inspection program personnel review labels and compare them to actual product formulations to verify that, when applicable, the processes used in the production of the product are listed accurately on the label; that the label is not misleading; and that the label is otherwise in compliance with all labeling requirements. If the label does not meet the labeling requirements in this rule, the product will be misbranded (under 21 U.S.C. 601(n)(1), 601(n)(2), 601(n)(6) or 601(n)(12)). FSIS will inform the establishment that it needs to make corrections to its label. In limited circumstances, if the label is particularly problematic (*e.g.,* the label presents potential health, safety, or dietary problems for the consumer), FSIS would rescind the label's approval under 9 CFR 500.8.

Descriptive Designations on Intact Product

Note that intact beef products may bear a descriptive designation of ''intact,'' consistent with 9 CFR 317.2(e). However, such a descriptive designation is not required. If producers want to use such a descriptive designation on labels of intact product to distinguish it from non-intact product, FSIS would allow the designation and would not consider it a special statement requiring label submission to FSIS and FSIS review prior to using the label. Rather, FSIS would generically approve the labels with the statement based on the provisions for generic approval in 9 CFR 412.2(a)(1).

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action,'' though not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

FSIS updated the Preliminary Regulatory Impact Analysis to take into account recently updated source data and modified timelines for implementation of the final rule. The changes to the costs and benefits sections incorporate the following factors:

- Information Resources, Inc., (IRI) scanner data was used to calculate the number of raw meat and poultry products in the retail market and the number of private and branded products. IRI gathers data by scanners in supermarkets, drugstores, and mass merchandisers and maintains a panel of consumer households that record purchases at outlets by scanning UPC codes on the products purchased.
- FSIS used the more up-to-date model from the secondary cost analysis in the proposed rule to estimate the cost of label changes for the industry. The label design costs were determined utilizing a March, 2011, FDA report that provides a model for determining label design costs.
- Also, FSIS adjusted the percentage of coordinated and uncoordinated label changes which resulted in greater proportion of labels incurring additional costs.

Baseline

The Final Report of the Expert Elicitation on the Market Shares for Raw Meat and Poultry Products Containing Added Solutions and Mechanically Tenderized Raw Meat and Poultry Product, February 2012 (February 2012 Report),[29] estimates that there are 555 official establishments that produce blade-, needle-, and both blade- and needle- tenderized beef products.[30] In terms of assigned HACCP processing size, the 555 establishments are comprised of 251 very small, 291 small, and 13 large establishments. Total U.S. beef production was 24.3 billion pounds in 2010.[31] The February 2012 Report estimates that the proportion of beef products that is mechanically tenderized is about 10.5 percent of total beef products sold, or 2.6 billion pounds. Of these products, an estimated 318 million pounds were brand-name-packaged by the establishment for retail sales; 640 million pounds were private-label-packaged by the establishment for retail sales; 1,594 million pounds were packaged by the establishment for food service, and 479 million pounds were packaged in retail operations.[32]

Retail establishments would be involved in repackaging products to be sold at retail. FSIS did not estimate the number of retail establishments that would be involved with repackaging raw or partially cooked mechanically tenderized beef products or the number of labels they would require to be in compliance with this rule.[33] However, in the Agency's estimation, very few retail facilities are producing mechanically tenderized beef. FSIS requested comments on the number of retailers who would be involved with repackaging raw or partially cooked mechanically tenderized beef products, but received none.

The new descriptive designation requirement will apply to all raw or partially cooked needle- or blade-tenderized beef products going to retail stores, restaurants, hotels, or similar

[29] Muth, Mary K., Ball, Melanie, and Coglaiti, Michaela Cimini February 2012.: RTI International Final Report—Expert Elicitation on the Market Shares for Raw Meat and Poultry Products Containing Added Solutions and Mechanically Tenderized Raw Meat and Poultry Products, Table 3–11 on p. 3–17.

[30] The February 2012 report estimates that 490 establishments produce products that are both mechanically tenderized and containing added solutions.

[31] Based on slaughter volumes multiplied by average carcass weights in the Expert Elicitation on the Market Shares for Raw Meat and Poultry Products Containing Added Solutions and Mechanically Tenderized Meat and Poultry Products, RTI International, February 2012.

[32] Ibid. Table 3–8 Proportions of Mechanically Tenderized-only Beef Product pounds by Packaging and labeling Type on p. 3–13, and Table 3–14 Estimated Pounds of Mechanically Tenderized-only Beef Products by Packaging and Labeling Type (Millions), p. 3–18.

[33] FSIS believes that the number of retailers involved in repackaging mechanically tenderized beef is small and declining, with large retailers and warehouse clubs moving toward ordering case-ready packaged beef products.

institutions, or other official establishments for further processing, unless such product is destined to be fully cooked or receive another full lethality treatment at an official establishment. The requirements for validated cooking instructions will apply to raw or partially cooked mechanically tenderized products destined for household consumers, hotels, restaurants, or similar institutions. If a second establishment repackages the product for household consumers, hotels, restaurants, or similar institutions, the second establishment will also be responsible for applying the validated cooking instructions to the product label. If retail stores repackage the product, they will have to include the descriptive designation and validated cooking instructions from the official establishment on the retail label.

Expected Cost of the Final Rule

This final rule requires all official establishments that produce raw or partially cooked mechanically tenderized beef products to modify their product labels to include the term ''mechanically tenderized,'' ''needle tenderized,'' or ''blade tenderized'' as part of the products' descriptive name and to add validated cooking instructions to the labels of all raw or partially cooked needle- or blade-tenderized beef products destined for household consumers, hotels, restaurants, or similar institutions. To incorporate this information, establishments may add the required information to existing label designs with minor changes.

Cost Analysis

IRI scanner data indicate that there are 4,148 [34] raw beef labels in retail, approximately 11.55 percent (or 479) of which are private label, with the remainder (3,669) branded. Although IRI's geographic coverage—which includes the largest urban areas in the U.S. and a few whole states—may yield a reasonable estimate of the universe of branded retail labels, a substantial number of chains that are large enough to have their own private labels but that only serve small or medium-sized cities may be missed. For this reason, the IRI results will be used as a lower bound on the number of retail labels affected by this rule. To estimate an upper bound, we make use of the estimates in FSIS's 2012 expert elicitation (see Table 2, below) to calculate that 46 percent (22%/[16% + 22% + 10%]) of retail labels may be private label. In this case, there are an estimated 3,152 private retail labels and 6,821 (3,669 + 3,152) total retail labels. Next, these estimates must be adjusted upward to account for food service labels (because the IRI scanner data do not capture food service labels); based on the contents of Table 2, about 52 percent of all mechanically tenderized beef products are for food service. From this, FSIS estimates about 52 percent of beef labels are for food service and the remaining 48 percent of labels are for retail, yielding estimates of 8,616 (4,148/48.14%) to 14,169 (6,821/48.14%) raw beef product labels in the marketplace.

TABLE 2—PERCENT OF MECHANICALLY TENDERIZED ONLY AND MECHANICALLY TENDERIZED AND ENHANCED BEEF PRODUCTS BY PACKAGING AND LABELING TYPE

Packaging or labeling type	Mechanically tenderized only (pounds)	Share of mechanically tenderized only (percent)	Mechanically tenderized and enhanced (pounds)	Share of all mechanically tenderized (percent)
Brand Name Label for Retail Sales	318	10	829	16
Private Label for Retail Sales	640	21	934	22
Foodservice	1,594	53	2,075	52
Retail	479	16	206	10

Source: Expert Elicitation on the Market Shares for Raw Meat and Poultry Products Containing Added Solutions and Mechanically Tenderized Raw Meat and Poultry Products. Final Report. Tables 3–14 and 3–16. Available at: http://www.fsis.usda.gov/wps/wcm/connect/3a97f0b5-b523-4225-8387-c56a1eeee189/Market_Shares_MTB_0212.pdf?MOD=AJPERES.

Using the 10.5-percent estimate for the share of beef products that are mechanically tenderized but do not contain added solutions,[35] and the 8,616 to 14,169 estimated range for number of beef labels (with brand and private allocations as shown in the previous paragraph), the estimated number of labels for mechanically tenderized beef products without added solutions is 905 (800 brand and 104 private) to 1,488 (1,316 branded and 172 private), as shown in Table 3.

There are an additional 15.8 percent (or 1,338 to 2,199) of all beef products that are mechanically tenderized and also contain added solutions. The cost of label changes for these products is included in another FSIS final rule, finalized in December of 2014, which requires label changes for products with added solutions. These costs were overestimated by using a 12 month compliance period, although changes are required in some cases by January 1, 2016, and in other cases by January 1, 2018. For the products required by the added solutions rule to have label changes by January 1, 2016, if such label changes have not already been completed, this rule will delay by a few months the imposition of labeling change costs. For products required by the added solutions rule to have label changes by January 1, 2018, this rule's requirements related to mechanical tenderization would generate non-negligible costs because the shortening of the compliance period (from 36 months as required by the added solutions rule alone to 12 months as required by this rule). However, the added solutions rule's estimates captured the difference in cost from the 12 and 36 month compliance periods by overestimating the cost of labeling changes for these products under a 12 month compliance period.[36]

[34] IRI scanner data was used to calculate the number of raw meat products in the retail market. IRI gathers data by scanners in supermarkets, drugstores, and mass merchandisers and maintains a panel of consumer households that record purchases at outlets by scanning UPC codes on the products purchased.

[35] From Muth, Mary K., Ball, Mary K., and Coglaiti, Michaela Cimini February 2012.: RTI International Final Report—Expert Elicitation on the Market Shares for Raw Meat and Poultry Products Containing Added Solutions and Mechanically Tenderized Raw Meat and Poultry Products, Table 3–6. In this report, products containing added solution are referred to as ''enhanced.''

[36] If any label changes for mechanically tenderized beef products with added solutions have already been completed in response to the added solutions rule, a second label revision is required to achieve compliance with this rule. The cost of a second label revision for mechanically tenderized

TABLE 3—RELABELING COST FOR BEEF ONLY MECHANICALLY TENDERIZED, 12-MONTH COMPLIANCE PERIOD

Lower bound	Branded		Private		Cost		
	800		104		Lower	Mid	Upper
Coor Chg	88	11%	5	5%	$15,857	$28,916	$41,042
Uncoor Chg	712	89%	99	95%	1,961,931	3,555,341	5,949,920
Total Lower Bound Cost					1,977,789	3,584,257	5,990,962
Annualized Cost (3% DR, 10 Year)					225,104	407,946	681,868
Annualized Cost (7% DR, 10 Year)					263,171	476,932	797,176
Upper bound	Branded		Private		Cost		
	1,316		172		Lower	Mid	Upper
Coor Chg	145	11%	9	5%	$26,069	$47,538	$67,473
Uncoor Chg	1,171	89%	163	95%	3,225,318	5,844,804	9,781,374
Total Upper Bound Cost					3,251,387	5,892,342	9,848,847
Annualized Cost (3% DR, 10 Year)					370,060	670,643	1,120,957
Annualized Cost (7% DR, 10 Year)					432,640	784,053	1,310,518
Minor Coordinated					170	310	440
Minor Uncoordinated					2,417	4,380	7,330

This final rule will require the product name to include the descriptive designation ''mechanically tenderized,'' ''needle tenderized,'' or ''blade tenderized.''

The number of labels was not tracked by the FSIS Labeling Submission and Approval System,[37] which replaced the Agency's earlier Labeling Information System Database, because many mechanically tenderized beef products are single-ingredient products, and establishments may be eligible for generic approval of these labels. FSIS does not have data on partially-cooked mechanically tenderized beef products but thinks that the amount of these products is small and therefore has not included them in the cost calculations.

This cost analysis uses the mid-point label design modification costs for a minor coordinated label change and a minor uncoordinated label change, as provided in a March 2011 FDA report.[38] This report defines a minor change as one in which only one color is affected and the label does not need to be redesigned. We conclude that the labeling change that will be required by this final rule is a minor change because the words ''mechanically tenderized,'' ''needle tenderized,'' or ''blade tenderized'' need to be added to the label, which is comparable to the addition of an ingredient to the ingredient list and the addition of validated cooking instructions is comparable to minimal changes to a facts panel (*e.g.* nutrition facts, supplement facts, or drug facts).

For comparison purposes, in 2011, the Food and Drug Administration estimated that the required labeling costs for its final rule [39] on the labeling of bronchodilators were deemed minor. The FDA required revisions to the ''Indications,'' ''Warnings,'' and ''Directions'' sections of the Drug Fact label. Using the RTI labeling model described in the March 2011 report, the FDA concluded that the revisions would be deemed minor. FSIS assumes that the addition of validated cooking instruction is similar to the aforementioned changes to the drug fact panel, and is therefore deemed minor.

FSIS anticipates that 11 percent of branded label (a label bearing the ''brand'' or name of the manufacturer of the product) changes will be coordinated. Five percent of the private label (a label branded by a contract manufacturer for a retailer under the name of the retailer rather than that of the manufacturer) changes will be coordinated and that 95 percent of the private label changes will be uncoordinated with the required changes.[40] A coordinated label change is one that occurs when a regulatory label change takes place along with other labeling changes planned by the firm. Moreover, this allows time to use existing labels and results in minimal losses of inventories of labels. An uncoordinated label change occurs when establishments make non-regulatory labeling changes because of an ingredient change or product reformulation; promotional text or graphics purposes; brand images or graphics update, science update, package changes (because of changes in the size, type or vendor); corporate contact, distributor, or country of origin update; and product claims addition or deletion. These labeling changes may be minor, major or extensive, and they may also apply to changing or adding a package insert. Uncoordinated label changes costs include (not necessarily in this order) administrative activities,

beef products with added solutions was not captured in the added solutions rule.

[37] Labeling Submission and Approval System (LSAS) replaced the Labeling Information System Database. LSAS, an electronic system designed to expedite many aspects of the prior label approval system by offering electronic submission and status checks for labels and Generic Label Adviser to assist establishments in determining whether labels can be approved generically or require sketch approval.

[38] Model to Estimate Costs of Using Labeling as a Risk Reduction Strategy for Consumer Products Regulated by the Food and Drug Administration, FDA, March 2011 (Contract No. GS–10F–0097L, Task Order 5).

[39] Labeling for Bronchodilators To Treat Asthma; Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use (76 FR 44475; Jul. 26, 2011); available at *http://www.gpo.gov/fdsys/pkg/FR-2011-07-26/pdf/2011-18347.pdf.*

[40] According to the Model to Estimate Costs of Using Labeling as a Risk Reduction Strategy for Consumer Products Regulated by the Food and Drug Administration, FDA, March 2011 (Contract No. GS–10F–0097L, Task Order 5), Table 3–1, Assumed Percentages of Changes to Branded and Private-label UPCs that Cannot be Coordinated with a Planned Changed, for private labels for food that has a compliance period of 30 months, it is assumed that 60% of the changes are not coordinated. Thus, 40% of the changes are coordinated. Private labels are not frequently changed. As such, the cost is much higher than for branded labels.

recordkeeping activities, analytical testing, graphic design alteration, market testing, prepress activities, engraving new plates, and printing and manufacturing labels.

The mid-point label design modification costs for a minor coordinated label change is an estimated $310 per label (with a range of $170 to $440) and $4,380 per label (with a range of $2,417 and $7,330) for a minor uncoordinated change. Using these costs for the number of minor coordinated and uncoordinated changes in branded and private labels, Table 3, FSIS estimates that the one-time total cost of modifying labels for all federally inspected processors is $3,584,257 to $5,892,342 as an upper and lower bound mid-point estimate. Over a ten-year period, the upper and lower bound annualized cost for the industry is $407,946 and $670,643 at a 3-percent discount rate over ten years and $476,932 and $784,053 at a 7-percent discount rate over ten years.

This final rule will require validated cooking instructions on the labels of packages for beef that is only mechanically tenderized and beef that is both mechanically tenderized and contains added solutions. Establishments may also incur costs to validate the required cooking instructions for raw and partially cooked needle- or blade-tenderized beef products. These costs may be incurred to ensure that the cooking instructions are adequate to destroy any potential pathogens that may remain in the beef products after being tenderized. Most cooking instruction validations will be contracted out to universities or conducted by trade associations or large establishments. FSIS estimates that a validation study will cost between $5,000 and $10,000 per product line with one formulation. Most studies will validate cooking instructions for beef products with two formulations: injected with or without solution; therefore, the total cost per validation study will be between $10,000 –$20,000.[41] However, industry cost will likely be relatively small because FSIS is issuing guidance along with this final rule that establishments can use to develop cooking instructions. For purposes of this analysis, FSIS assumes that the costs of developing validated cooking instructions will be minimal because FSIS assumes that most establishments will follow FSIS's guidance. FSIS requested data on the costs of developing validated cooking instructions; however, none were received.

Various types of time costs are associated with this rule. For example, there may be costs due to changes in cooking procedures, as kitchen staff may prepare products differently once the product is labeled to indicate that it has been mechanically tenderized and once the labeling includes validated cooking instructions (*e.g.,* staff may place a product in foil and keep it in a warm oven until it reaches the rest time established in the validated cooking instructions). The changes could potentially lead to training costs for kitchen staff to properly prepare mechanically tenderized beef products.

There may be additional wait time for consumers in both food service settings and at home before eating their meals due to increased cooking or holding product. In the absence of data with which to reliably estimate the time cost associated with this rule, we have not attempted to quantify this cost.

FSIS Budgetary Impact of the Final Rule

This final rule will result in no impact on the Agency's operational costs because the Agency will not need to add any staff or incur any non-labor expenditure since inspectors periodically perform tasks to verify the presence of mandatory label features and to ensure that the label is an accurate representation of the product. The Agency's cost to develop guidance material that establishments can use to develop cooking instructions will be minimal because such guidance exists and can be modified and posted on the FSIS Web site in fewer than six staff-hours.

Expected Benefits and Miscellaneous Impacts of the Final Rule

The Agency has determined that the final new labeling requirements will improve public awareness of product identities. The final rule will clearly differentiate non-intact, mechanically tenderized beef products from intact products, thereby providing truthful and accurate labeling of beef products.

As stated earlier, tenderness is a key factor in deciding to purchase a beef product. Yet it is not often easy to distinguish the more tender from the less tender, and especially the blade-tenderized from the non-tenderized beef products. The mandatory descriptive designation ''mechanically tenderized,'' ''needle tenderized,'' or ''blade tenderized'' on the labels of the needle- or blade-tenderized or similar products will inform consumers of the additional product attributes when they are making their purchase decisions.

Although the benefits of having such additional information cannot be quantified, providing better market information to consumers could promote better competition among establishments that produce beef products. In addition, if the new label causes a divergence in price between intact and mechanically tenderized beef, there would be a number of changes in consumer and producer surplus. Consumers who purchase mechanically tenderized beef in the absence of the rule, and would continue doing so in its presence, would gain surplus if the price for mechanically tenderized beef were to decrease, while consumers purchasing intact beef in the absence of the rule would experience a loss of surplus because of the increase in price for intact beef. Some producers of intact beef or other meats will realize a surplus increase if consumers substitute such products for mechanically tenderized beef.

FSIS has concluded that labeling information on needle- or blade-tenderized beef products may help consumers and retail establishments better understand the product they are purchasing. This knowledge is the first step in helping consumers and retail establishments become aware that they need to cook these products differently than intact beef products before the products can be safely consumed. Additionally, by including cooking instructions, the food service industry and household consumers will be made aware that a mechanically tenderized beef product or injected beef product needs to be cooked to a minimum internal temperature and may need to be maintained at this temperature for a specific period of time to sufficiently reduce the presence of potential pathogens in the interior of the beef product.

Additionally, the Food Code for the food service industry, which most states have adopted into State law, recommends cooking mechanically tenderized and injected meats to a minimum temperature of 145 °F for a minimum of 3 minutes. In the absence of readily available information on the label as to how to cook the beef product and whether it is intact or mechanically tenderized, the food service industry likely now spends time determining whether the beef products it purchases have been mechanically tenderized. The final rule will require that raw or partially-cooked mechanically tenderized beef be labeled to indicate that it has been tenderized and to include validated cooking instructions.

[41] Per telephone conversation with the Grocery Manufacturers Association Director of Science Operations, Food Protection.

Therefore, the final rule will save the food service industry time to meet State requirements based on the Food Code. In addition, the new labeling requirements will lead to improved public health as a result of less mistakes in the food service industry meeting the State requirements to adequately cook mechanically tenderized beef products.

In addition, in this final analysis, FSIS did not include benefits associated with reduced illness associated with mechanically tenderized product prepared at food service establishments. First, FSIS recognizes that even when the food service industry can more readily determine whether beef has been mechanically tenderized, consumers may continue to request that the product be served to degree of doneness that is less than fully cooked. In most States, as long as the restaurant has noted on the menu the risk of consuming meat products that are undercooked, the food service establishment may serve the product less than fully cooked and be in compliance with State law. In addition, FSIS does not have data to estimate the percentage of total food service establishments that currently may not have sufficient information concerning whether beef product they serve is mechanically tenderized or currently may not have adequate cooking instructions for such product. Therefore, FSIS cannot effectively estimate the percentage of product that will be routinely prepared differently at food service establishments as a result of this rule.

FSIS generated an estimate of the annual number of illnesses from mechanically (needle- or blade-) tenderized beef steaks and roasts and mechanically tenderized beef steaks and roasts that contain added solutions that could potentially be avoided as a result of this final rule. FSIS evaluated the effect of additional cooking of non-intact product by first determining the implied concentration of organisms prior to cooking given current information, then determining the effect of adding additional cooking. Additional cooking is modeled to a minimum temperature of 160 °F. Current cooking practices as captured in the EcoSure dataset do not specifically include the time from when the final cooking temperature was recorded to when consumption occurred. It is likely that product in this data set encountered a range of dwell times. FSIS recommends in its guidance concerning steaks and roasts a cooking temperature of 145 °F with 3 minutes dwell time for cooking steaks and whole roasts because data support that this would be equivalent to cooking at 160 °F without holding a product at that temperature for any dwell time. FSIS's guidance concerning cooking steaks and whole roasts is located at *http://blogs.usda.gov/2011/05/25/cooking-meat-check-the-new-recommended-temperatures/.* If consumers adopt the cooking practices and temperature and dwell time combinations recommended in the guidance, the results would be comparable to their cooking product to 160 °F but not holding product at that temperature for any dwell time.[42] [43] Therefore, FSIS used the results from the risk analysis that estimate the benefits of consumers cooking mechanically tenderized product to 160 °F without a dwell time because they are equivalent to 145 °F with 3 minutes of dwell time and because the Agency did not have information about dwell time from the risk analysis.

The CDC recently completed an analysis attributing foodborne illnesses to their sources. Painter, *et al.,* examined outbreak data from 1998 through 2008 and identified 186 outbreaks of *E. coli* O157 resulting in 4,844 illnesses during that period.[44] As a consequence of this analysis, Painter, *et al.,* attributed 39.4% of illnesses or 1,909 (4,844 × 0.394) to beef.

Of the 6 outbreaks in tenderized products described in the preamble of the proposed rule (78 FR at 34592), 5 occurred during the time frame analyzed by Painter, *et al.* These 5 outbreaks (occurring between 2000 and 2007) resulted in 151 illnesses. Thus, approximately 7.9% (151 ÷ 1,909) of *E. coli* O157 illnesses are attributable to tenderized beef product.

Painter, *et al.'s* work includes the illnesses associated with outbreaks, which constitute only a fraction of the overall *E. coli* O157 illnesses that occur each year. For an estimate of overall illness numbers, we turn to another CDC study, whose authors estimate that there are 63,153 annual illnesses in the United States attributable to *E. coli* O157 from all sources.[45] To determine the annual number of illnesses from *E. coli* O157 (STEC O157), CDC begins with the annual incidence of STEC O157 infections reported to CDC's Foodborne Diseases Active Surveillance Network (FoodNet) sites from 2005 to 2008. This value is adjusted up using an under-diagnosis multiplier that is based on the following factors:

1. Whether a person with diarrhea seeks medical care. CDC bases this on unpublished surveys of persons with bloody or non-bloody diarrhea conducted in 2000–2001, 2002–2003, and 2006–2007. CDC estimates that about 35% of persons with bloody diarrhea (about 90% of STEC O157 illnesses) would seek medical care and about 18% of persons with non-bloody diarrhea would seek medical care.

2. Whether a person seeking medical care submits a stool specimen. This is also based on unpublished surveys of persons with bloody or non-bloody diarrhea conducted in 2000–2001, 2002–2003, and 2006–2007. CDC estimates that about 36% of persons with bloody diarrhea seeking medical care and about 19% of persons with non-bloody diarrhea seeking medical care would submit stool specimens.

3. Whether a laboratory receiving a stool specimen would routinely test it for STEC O157. This is based on a published study from the FoodNet Laboratory Survey.[46] CDC estimates that 58% of laboratories would routinely test for STEC O157.

4. How sensitive the testing procedure is. CDC used a laboratory test sensitivity rate of 70% based on studies of *Salmonella*.[47] [48]

[42] Equivalency in cooking temperatures and times can be estimated using D and Z-values. The D-value is a measure of how long bacteria must be exposed to a particular temperature to effect a 1 log10 reduction. The Z-value is a measure of how much temperature change is necessary to effect a 1 log10 change in the D-value. Although these values have not been measured for *E. coli* O157:H7 in steaks, they have been measured in ground beef. At 158 °F (70 °C) *E. coli* O157:H7 had a D-value of about 3.3 seconds, at 144.5 °F (62.5 °C) the D-value was 52.8 seconds. Three minutes at 145 °F would be equivalent to more than 10 seconds at 160 °F. Using the Z-value for *E. coli* O157:H7 in ground beef yields similar estimates. The Z-value was given as 9.8 °F (5.43 °C). Changing the temperature from 160 °F to 145 °F would then represent an increase in D-value of about 1.5 log10. Thus, 3 minutes at 145 °F would be equivalent to 5.7 seconds at 160 °F. In either case, three minutes at 145 °F is more than equivalent to an instantaneous temperature (<1 sec) at 160 °F.

[43] Murphy, R. Y., E. M. Martin, *et al.* (2004). ''Thermal process validation for Escherichia coli O157:H7, *Salmonella,* and Listeria monocytogenes in ground turkey and beef products.'' *J Food Prot* 67(7): 1394–1402.

[44] Painter, J., R. Hoekstra, *et al.* (2013). ''Attribution of foodborne illnesses, hospitalizations, and deaths to food commodities by using outbreak data, United States, 1998–2008.'' *Emerg Infect Dis* 9(3): 407–415.

[45] Scallan, E., R. M. Hoekstra, *et al.* (2011). ''Foodborne illness acquired in the United States—major pathogens.'' *Emerg Infect Dis* 17(1): 7–15.

[46] Voetsch, A.C., F.J. Angulo, *et al.* (2004). ''Laboratory practices for stool-specimen culture for bacterial pathogens, including Escherichia coli O157:H7, in the FoodNet sites, 1995–2000.'' *Clin Infect Dis* 38 Suppl 3: S190–197.

[47] Chalker, R.B. and M.J. Blaser 1988. ''A review of human salmonellosis: III. Magnitude of Salmonella infection in the United States.'' *Rev Infect Dis* 10(1): 111–124.

[48] Voetsch, A.C., T.J. Van Gilder, *et al.* (2004). ''FoodNet estimate of the burden of illness caused by nontyphoidal *Salmonella* infections in the

Continued

CDC also adjusted the value for geographical coverage of the FoodNet sites and for the changing United States population for the years 2005–2008.

The value was also adjusted down for the following factors:

1. The proportion of illnesses that were acquired outside of the United States. Based on the proportion of FoodNet cases of STEC O157 infection who reported travel outside the United States within 7 days of illness onset (2005–2008), CDC estimated that 96.5% of illnesses were domestically acquired.

2. The proportion of STEC O157 outbreak-associated illnesses that was due to foodborne transmission. Based on reported outbreaks CDC estimated that 68% were foodborne.[49] The overall effect of the upward and downward adjustments is a multiplier of 26.1 that is applied to the reported number of illness which is then adjusted down by about 35% to account for domestically acquired foodborne illness.

CDC's credible interval surrounding this point estimate ranges from 17,587 to 149,631.[50] The estimated annual illnesses due to mechanically tenderized product is given by 63,153 (annual estimated illnesses of *E. coli* O157:H7 [51]) × 0.394 (proportion of *E. coli* O157:H7 illnesses attributable to beef [52]) × 0.079 (proportion of beef attributable illnesses due to tenderized product [53]) = 1,965. This gives a range of estimated annual illnesses from 547 (= 17,587 × 0.394 × 0.079) to 4,657 (= 149,631 × 0.394 × 0.079).

An analysis of the NHANES 2005–2006 Dietary Interview, Individual Foods, First Day, and Second Day files estimated approximately 11.7 billion servings annually of steaks and roasts. FSIS contracted with Research Triangle Institute to estimate market shares for mechanically tenderized beef and mechanically tenderized beef with added solutions.[54] After accounting for the proportion of all beef that was ground, FSIS estimates that 21.0% of non-ground product is mechanically tenderized only and that 31.6% of non-ground product was mechanically tenderized with added solutions. Thus, FSIS estimates that mechanically tenderized beef accounts for 6.2 billion servings annually. FSIS also estimates that the frequency of illness for mechanically tenderized product is 1,965 ÷ 6.2 billion or 320 illnesses per billion servings, with a range from 88 (= 547 ÷ 6.2 billion) to 751 (= 4,657/6.2 billion) illnesses per billion servings.

The dose-response function for a pathogen associates an average dose with a corresponding frequency of illness. For *E. coli* O157:H7 the dose-response function is characterized by a linear part in which the predicted probability of illness per serving across all exposures is proportional with respect to an average dose and by a non-linear part in which the predicted probability of illness is not proportional to dose.

In the case of *E. coli* O157 illnesses attributable to mechanically tenderized beef, the frequency of illness is very low; therefore the mean dose across the population of servings that could account for this frequency of illness is also low. For one set of parameters the dose response function for *E. coli* O157:H7 corresponds to an average dose of 0.0001 *E. coli* O157:H7 bacteria per serving with a frequency of illness of 320 per billion.[55] This average dose is more than 5 $\log_{10}$ below the point at which the dose response function becomes non-linear. This makes the average dose an appropriate surrogate for the distribution of all doses.[56] At the lower end of the range of illnesses, a dose of 0.000028 *E. coli* O157:H7 bacteria per serving corresponds to a frequency of illness of 88 per billion servings. At the upper end of the range of illnesses, a dose of 0.00024 *E. coli* O157:H7 bacteria per serving corresponds to a frequency of illness of 751 per billion servings. Both of these values also fall well below the point at which the dose response function becomes non-linear.

From a post-cooking dose of 0.0001, a pre-cooking dose of *E. coli* O157:H7 bacteria can be calculated by determining the average contamination level needed to survive cooking. The 2007 EcoSure consumer cooking temperature audit [57] involved the collection of data from primary shoppers of over 900 households geographically dispersed across the country. Participants were asked to record the final cooking temperature and name or main ingredient of any entrée they prepared during the week of the study. Of the 3,257 recorded consumer cooking temperatures in the database for all products, 318 recorded consumer cooking temperatures ranging from 82 °F to 212 °F for beef (not ground). Table 4 shows the number of observations for each recorded cooking temperature.

TABLE 4—FINAL RECORDED CONSUMER COOKING TEMPERATURES FOR BEEF (NOT GROUND) IN 2007 ECOSURE CONSUMER COOKING TEMPERATURE AUDIT

[EcoSure-EcoLab, 2007]

Final cooking temperature	Observations	Percent
80–89	1	0.3
90–99	3	0.9
100–109	6	1.9
110–119	11	3.5
120–129	19	6.0
130–139	27	8.5
140–149	38	11.9
150–159	54	17.0
160–169	61	19.2
170–179	31	9.7
180–189	45	14.2
190–199	14	4.4
200–209	7	2.2
210–219	1	0.3

Sixty-seven (21%) of the recorded cooking temperatures were below 140 °F and 159 (50%) of the temperatures were below 160 °F. A 2010 USDA Agricultural Research Service (ARS) study by Luchansky, *et al.,*[58] looked at the relationship between final cooking temperatures and $\log_{10}$ reductions for mechanically tenderized beef. An additional ARS study by Luchansky, *et al.,*[59] also examined the relationship between final cooking temperatures and

United States.'' *Clin Infect Dis* 38 Suppl 3: S127–134.

[49] Rangel, J.M., P.H. Sparling, *et al.* (2005). ''Epidemiology of Escherichia coli O157:H7 outbreaks, United States, 1982–2002.'' *Emerg Infect Dis* 11(4): 603–609.

[50] Scallan, E., R.M. Hoekstra, *et al.* (2011). ''Foodborne illness acquired in the United States—major pathogens.'' *Emerg Infect Dis* 17(1): 7–15.

[51] Ibid.

[52] Painter, J., R. Hoekstra, *et al.* (2013). ''Attribution of foodborne illnesses, hospitalizations, and deaths to food commodities by using outbreak data, United States, 1998–2008.'' *Emerg Infect Dis* 9(3): 407–415.

[53] 151 outbreak illnesses attributable to tenderized beef out of 1,909 outbreak illnesses attributable to all beef (151/1,909 = 0.079).

[54] Muth, M.K., M. Ball, *et al.* (2012). Expert Elicitation on the Market Shares for Raw Meat and Poultry Products Containing Added Solutions and Mechanically Tenderized Raw Meat and Poultry Products. Research Triangle Park, NC 27709, RTI International, 3040 Cornwallis Road.

[55] Powell, M., USDA–FSIS. 2002. ''Comparative Risk Assessment for Intact (Non Tenderized) and Non-Intact (Tenderized Beef): Technical Report''. *fsis.usda.gov.* Retrieved April 27, 2011, from: *http://www.fsis.usda.gov/wps/wcm/connect/7afddc93-f812-42fb-92b7-52455124bbe0/Beef_Risk_Assess_ExecSumm_Mar2002.pdf?MOD=AJPERES.*

[56] Williams, M.S., E.D. Ebel, *et al.* (2011). ''Methodology for determining the appropriateness of a linear dose-response function.'' *Risk Anal* 31(3): 345–350.

[57] EcoSure-EcoLab. (2007). ''EcoSure 2007 Cold Temperature Database.'' *FoodRisk.org.* Retrieved May 26, 2010, from *http://foodrisk.org/exclusives/EcoSure/.*

[58] Luchansky, J.B., A.C. Porto-Fett, *et al.* (2012). ''Fate of Shiga toxin-producing O157:H7 and non-O157:H7 Escherichia coli cells within blade-tenderized beef steaks after cooking on a commercial open-flame gas grill.'' *J Food Prot* 75(1): 62–70.

[59] Ibid.

log_{10} reductions for chemically injected beef (mechanically tenderized beef with added solutions). Equations derived from these studies combined with the distribution of final cooking temperatures shown in Table 4 estimate that an average pre-cooking dose of 0.0432 *E. coli* O157:H7 bacteria per serving [60] would result in an average post-cooking dose of 0.0001. Thus, a pre-cooking dose of 0.0432 corresponds with the estimate of 1,965 illnesses. Given the current cooking distribution, about 93% of the 1,965 illnesses are attributed to cooking temperatures below 160 °F and about 7% to cooking temperatures equal to or greater than 160 °F.

To evaluate the effect of using a higher minimum cooking temperature, FSIS modified the distribution derived from the EcoSure (2007) data set so that all of the observations that were originally below 160 °F were set to 160 °F. FSIS then calculated a new predicted number of illnesses using this modified cooking temperature distribution with the pre-cooking dose of 0.0432. This changed the post-cooking average dose from 0.0001 *E. coli* O157:H7 bacteria per serving to an average dose of 0.0000073, which corresponds to a frequency of illness of 23 per billion. With this change, the predicted number of illnesses decreases from 1,965 to 144. Thus, if all consumers cook all mechanically tenderized beef to at least 160 °F, the resulting total number of illness will be 144. Analogous calculations yield illness estimates of 40 and 341 illness, respectively, if the baseline annual illness totals are 547 and 4,657 (the lower and upper values of illnesses that could be attributed to mechanically tenderized beef when we consider the original uncertainty in CDC estimates of all foodborne O157 illnesses (from 17,587 to 149,631)).

The annual estimated number of illnesses averted or prevented is estimated at 1,821 (1,965 illnesses less 144 illnesses), with a range of 507 illnesses (547 illnesses—40 illnesses) to 4,316 illnesses (4,657 illnesses—341 illnesses), if mechanically tenderized and mechanically tenderized beef containing added solution is cooked to a minimum temperature of 160 °F (which is equivalent to cooking to a minimum internal temperature of 145 °F with 3 minutes of dwell time). However, FSIS knows that not all consumers will change their behavior based on reading the labels and, therefore, the Agency has estimated the uncertainty surrounding the number of illnesses that will be averted by obtaining ranges for consumer response rate, as well as using the range for the estimated number of illnesses if all consumers cooked the product at a minimum recommended temperature.

To determine this, FSIS used studies on the impacts of food product labels on consumer behavior. These studies estimated the proportion of consumers changing their behavior in response to the presence of cooking instructions (safe-handling instructions) ranging from 15 to 19 percent.[61] In a study of the nutrition fact panel on food products, the American Dietetic Association (ADA) conducted a survey which indicated that 56 percent of the people interviewed claimed to have modified their food choices after using this nutrition fact labeling (American Dietetic Association, 1995).[62] Finally, the Food Marketing Institute (FMI) in early 1995 indicated that the nutrition fact label may be causing some dietary change. Fifteen percent of the shoppers indicated that they had stopped buying products they had regularly purchased, after reading the label.[63] We use the range (15 to 56 percent) as the estimate for the impact of labels on consumer behavior in retail and food service, with our primary estimate equaling the average of available estimates, or 24 percent.

In addition, the RTI study indicates that the market share for mechanically tenderized beef and beef containing added solution is estimated at 48 percent at retail.[64]

Table 5 shows the estimated reduction in illness numbers based on these assumptions for consumer and food service provider behavior. To derive the estimated number of illnesses averted and focusing first on inputs derived from Scallan, *et al.'s* primary estimate, the range for the estimate would be 131 illness (1,821 illnesses (mid-point estimate from the risk analysis) × 48% (retail share of mechanically tenderized beef market) × 15% (lower end of the range for percent of consumer using validated cooking instructions) to 489 illness averted (1,821 illnesses (mid-point estimate from the risk analysis) × 48% (retail share of mechanically tenderized beef market) × 56% (upper end of the range for percent of consumers using validated cooking instructions). The primary estimate is 210 illnesses.

TABLE 5—RESPONSE RATE AND RESULTING AVERTED ILLNESSES FROM RETAIL

	Lower	Primary	Upper
Estimated Preventable Illnesses	507	1,821	4,316
Response to Label	15%	[1] 24%	56%
Share of Mechanically Tenderized Beef in Retail		48%	
Total Estimated Illnesses Averted—Lower Bound	37	58	136
Total Estimated Illnesses Averted—Primary	131	210	489
Total Estimated Illnesses Averted—Upper Bound	311	497	1,160

[60] The previous estimate for an average pre-cooking dose was 0.0188 *E. coli* O157:H7 bacteria per serving. Both estimates were derived using an attribution estimate of 1,965 illnesses and cooking data from the 2007 EcoSure study. The previous estimate, however, used data from two ARS studies (Luchansky 2011 and Luchansky 2012) provided to FSIS prior to their publication. After their publication, we substituted the data as published. This had the effect of decreasing the effect of cooking. Thus, in the previous submission, cooking to 160 °F resulted in a decrease from 1,965 illnesses to 78 illnesses. With the change to the published data, cooking to 160 °F results in a decrease from 1,965 illnesses to 144 illnesses. The change of the pre-cooking dose from 0.0188 to 0.0432 is a result of this recalculation.

[61] Yang states that 15% (51% of respondents seen the Safe Handling Instruction labels × 79% remembered reading the labels × 37% changing their behavior after seeing and reading the labels), and Bruhn states that 17% (60% of respondents seen the labels × 65% said that their awareness was increased × 43% said that they changed their behavior). Ralston states that 19% (67% of respondents seen the label × 29% who changed their behavior).

[62] America's Eating Habits: Changes and Consequences. U.S. Department of Agriculture, Economic Research Service, Food and Rural Economics Division. Agriculture Information Bulletin No. 750.

[63] Food Marketing Institute (FMI) states that of the 43 percent of the shoppers interviewed, who had seen the label, 22 percent indicated it had caused them to start buying and using food products they had not used before, and 34 percent said they had stopped buying products they had regularly. We use the higher percentage of 15% (43% × 34%) in our estimate. FMI and Prevention Magazine Report Shopping for Health: Balancing Convenience, Nutrition and Taste, 1997.

[64] RTI, pp. 3–12 and 3–14.

TABLE 5—RESPONSE RATE AND RESULTING AVERTED ILLNESSES FROM RETAIL—Continued

	Lower	Primary	Upper
Expected Benefits—Lower Bound	$119,770	$191,631	$447,140
Expected Benefits—Primary	$430,178	$688,286	$1,606,000
Expected Benefits—Upper Bound	$1,019,577	$1,631,324	$3,806,422

[1] The average of the percentages of consumer response rate: Yang 15%, Bruhn 17%, Ralston 19%, American Dietetic Association 56%, and FMI 15% as discussed in the benefits section.

Using the FSIS estimate for the average cost per case for an *E. coli* O157:H7 illness of $3,281,[65] the expected benefits from this final rule are $688,286 per year (with a range of $430,178 to $1,606,000). Using the credible interval from Scallan, *et al.,* provides expected benefits of $191,631 per year for 58 illnesses prevented (with a range of $119,770 to $447,140) for the lower bound of the credible interval and expected benefit of $1,631,324 per year for 497 illnesses prevented (with a range of $1,019,577 to $3,806,422) in the upper bound of the credible interval. This estimate for the average cost of an *E. coli* O157:H7 illness is derived by using the 2010 version of ERS Cost calculator (for *E. coli*) and replacing the case numbers with new case numbers based on Scallan's report.

For *E. coli,* FSIS adjusted Scallan's case distribution to fit the ERS Cost Calculator because Scallan reported each illnesses in three categories (doctor visits, hospitalization, and death) while the ERS Cost Calculator for *E. coli* O157 has seven severity categories. By changing only the case numbers, FSIS kept all other assumptions in the ERS Cost Calculator. ERS updated the dollar units to 2010 dollars and FSIS is using these estimates.

These estimates represent a minimal estimate for an average cost of illness because they only include medical costs and loss-of-productivity costs. They do not include pain and suffering costs.

FSIS believes that consumers prefer lower cooking temperatures and therefore they may substitute other meat choices rather than cooking at a higher recommended temperature included in cooking instructions. This welfare loss associated with substituting to less-preferred meats or cooking to temperatures that are higher than ideal (from a taste perspective) was not quantified in the analysis.

Conclusion

The upper and lower bound cost to produce labels for mechanically tenderized beef is a one-time cost of $3,584,257 and $5,892,342. The upper and lower bound annualized cost is $476,932 and $784,053 for 10 years at a 7-percent discount rate or $407,946 and $670,643 over 10 years at a 3-percent discount rate.

The expected number of illnesses prevented would be 210 per year, with a range of 131 to 489, if the predicted percentages of beef steaks and roasts are cooked to an internal temperature of 160 °F (which is equivalent to 145 °F and 3 minutes of dwell time). These prevented illnesses amount to $688,286 per year in benefits with a range of $430,178 to $1,606,000. The expected annualized net benefits, given the lower and upper bound cost estimate are −$95,768 to $211,353 as reflected in Table 6.

Using the lower end of the credible interval from Scallan, *et al.,* provides an expected number of illness prevented of 58 per year, with a range of 37 to 136, as discussed earlier. These prevented illnesses amount to $191,631 in benefits, with a range of $119,770 to $447,140. The expected annualized net benefits for the lower end of the Scallan's credible interval, given the lower and upper bound cost are −$592,422 to −$285,301.

Using the upper end of the credible interval from Scallan, *et al.,* provides an expected number of illnesses prevented of 497 per year, with a range of 311 to 1,160 as discussed earlier. These prevented illnesses amount to $1,631,324 in benefits, with a range of $1,019,577 to $3,806,422. The expected annualized net benefits for the upper end of the Scallan's credible interval given the upper and lower bound costs are $847,270 to $1,154,391.

TABLE 6—ESTIMATED NET BENEFITS

	Benefits	Cost	Lower bound net benefits	Upper bound net benefits
Scallan Midpoint Credible Interval				
Midpoint	$688,286	.....	$211,353	−$95,768
Lower	430,178	476,932	−46,754	−353,875
Upper	1,606,000	784,053	1,129,067	821,946
Scallan Lower Credible Interval				
Midpoint	191,631	.....	−285,301	−592,422
Lower	119,770	476,932	−357,163	−664,284
Upper	447,140	784,053	−29,792	−336,913
Scallan Upper Credible Interval				
Midpoint	1,631,324	.....	1,154,391	847,270
Lower	1,019,577	476,932	542,645	235,524

[65] The FSIS estimate for the cost of *E. coli* O157:H7 ($3,281 per case,—2010 dollars) was developed using the USDA, ERS Foodborne Illness Cost Calculator: STEC O157 (June 2011). *http://webarchives.cdlib.org/sw1rf5mh0k/http://www.ers.usda.gov/Data/FoodborneIllness/* (archived link—calculator currently being updated). FSIS updated the ERS calculator to incorporate the Scallan (2011) case distribution for STEC O157. Scallan E. Hoekstra, Angulo FJ, Tauxe RV, Widdowson MA, Roy SL, *et. al.* (2011) ''Foodborne Illness Acquired in the United States—Major Pathogens.'' *Emerging Infectious Diseases.*

In addition to the quantified net benefits mentioned above, the rule will generate the unquantifiable benefits of increased consumer information and market efficiency, an unquantified consumer surplus loss and an unquantified cost associated with food service establishments changing their standard operating procedures.

As mentioned above, FSIS is using an estimate of the number of establishments producing needle- or blade-tenderized beef products and the number of labels that will be modified as a result of this final rule.

Additionally, FSIS did not estimate the number of validation studies that will be necessary to develop cooking instructions for raw and partially cooked needle- or blade-tenderized beef products. FSIS requested comments on the number of validation studies; however, no data was received.

Alternatives

FSIS considered several alternatives to the final rule:

Option 1. Extend labeling requirements to include vacuum tumbled beef products and enzyme-formed beef products. FSIS considered the option to amend the labeling regulations to include a new requirement for labeling all vacuum tumbled and enzyme-formed beef products. But, as discussed earlier, FSIS does not have, nor was it provided with, sufficient data on the production practices and risks of consuming vacuum-tumbled and enzyme-formed beef products to proceed with this option.

Option 2. Extend the labeling requirements to all needle- or blade-tenderized meat and poultry products. FSIS considered the option to amend the labeling regulations to include a new requirement for labeling all mechanically tenderized meat and poultry products. However, as discussed above, FSIS does not have, nor was it provided with, sufficient data on the production practices and risks of consuming mechanically tenderized poultry products or mechanically tenderized meat products, other than beef, to proceed with this option.

Option 3. Validated cooking instructions for needle- or blade-tenderized beef, needle-injected beef, and all beef containing solutions. FSIS considered the option of amending the labeling regulations to require validated cooking instructions for needle- or blade-tenderized beef, needle-injected, and all beef containing solutions. However, FSIS did not find any outbreak data for products that contain added solutions but are not injected. In addition, if products are marinated but not injected, the pathogen remains on the surface of the product and would typically be eliminated, even if the product is cooked to rare temperatures. Therefore, FSIS does not have any data necessary to substantiate the need for this alternative.

Regulatory Flexibility Analysis

The FSIS Administrator certifies that, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601–602), the final rule will not have a significant impact on a substantial number of small entities in the United States. This determination was made because the rule will affect the labeling of about 10.5% of 24.3 billion pounds of beef products. Over 97 percent of the 555 Federal establishments that produce mechanically tenderized beef products could possibly be affected by this final rule are small or very small according to the FSIS HACCP definition. There are about 251 very small establishments (with fewer than 10 employees) and 291 small establishments (with more than 10 but less than 500 employees). Therefore, a total of 542 small and very small establishments could possibly be affected by this rule. The FSIS HACCP definition assigns a size based on the total number of employees in each official establishment. The Small Business Administration definition of a small business applies to a firm's parent company and all affiliates as a single entity.

These small and very small manufacturers, like the large manufacturers, will incur the costs associated with modifying product labels to add on the labels ''mechanically tenderized,'' ''needle tenderized,'' or ''blade tenderized,'' and validated cooking instructions needed to ensure adequate pathogen destruction.

Based on the upper bound estimated number of labels that will be required by the establishments, the cost will add an average of $0.0038 per package ($5,892,342/951,000,000 packages of needle- or blade-tenderized beef).[66] The average cost per establishment will be $10,616 per establishment ($5,892,342/555). Also, small and very small establishments will tend to have a smaller number of unique products and will therefore have a smaller number of labels to modify, resulting in less labeling cost.

The labeling costs discussed above are one-time costs. FSIS believes these one-time costs will not be a financial burden on small entities.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or record keeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). This information collection request is at OMB awaiting approval. FSIS will collect no information associated with this rule until the information collection is approved by OMB.

Copies of this information collection assessment can be obtained from Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6083, South Building, Washington, DC 20250–3700; (202) 690–6510.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSIS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, FSIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be

[66] FSIS estimates that the annual quantity of mechanically tenderized beef at is about 951 million packages (2.6 billion pounds of mechanical tenderized beef produced/2.735 average weight of a retail package according to the National Cattlemen's Beef Association).

preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

USDA Nondiscrimination 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.

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 it on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this **Federal Register** 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.

List of Subjects in 9 CFR Part 317

Food labeling, Food packaging, Meat inspection, Nutrition, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, FSIS amends 9 CFR Chapter III as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

■ 1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 2. Amend § 317.2 by adding a new paragraph (e)(3) to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(e) * * *

(3) *Product name and required validated cooking instructions for needle- or blade-tenderized beef products.*

(i) Unless the product is destined to be fully cooked or to receive another full lethality treatment at an official establishment, the product name for a raw or partially cooked beef product that has been mechanically tenderized, whether by needle or by blade, must contain the term ''mechanically tenderized,'' ''needle tenderized,'' or ''blade tenderized,'' as a descriptive designation and an accurate description of the beef component.

(ii) The product name must appear in a single easy-to-read type style and color and on a single-color contrasting background. The print may appear in upper and lower case letters, with the lower case letters not smaller than ⅓ the size of the largest letter.

(iii) The labels on raw or partially cooked needle- or blade-tenderized beef products destined for household consumers, hotels, restaurants, or similar institutions must contain validated cooking instructions, including the cooking method, that inform consumers that these products need to be cooked to a specified minimum internal temperature, whether the product needs to be held for a specified time at that temperature or higher before consumption to ensure that potential pathogens are destroyed throughout the product, and a statement that the internal temperature should be measured by a thermometer. These validated cooking instructions may appear anywhere on the label.

* * * * *

Done, at Washington, DC, on May 13, 2015.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2015–11916 Filed 5–15–15; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1537; Directorate Identifier 2015–SW–014–AD; Amendment 39–18160; AD 2015–08–51]

RIN 2120–AA64

Airworthiness Directives; The Enstrom Helicopter Corporation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are publishing a new airworthiness directive (AD) for Enstrom Helicopter Corporation (Enstrom) Model F–28A, 280, F–28C, F–28C–2, F–28C–2R, 280C, F–28F, F–28F–R, 280F, 280FX, and 480 helicopters. This AD was sent previously to all known U.S. owners and operators of these helicopters and supersedes Emergency AD (EAD) 2015–04–51, dated February 12, 2015. This AD requires inspecting certain main rotor spindles (spindles) for cracks and reporting the inspection results to the FAA. This AD is prompted by a fatal accident and reports of spindles with cracks. The actions specified in this AD are intended to detect a crack in a spindle and prevent loss of a main rotor blade and subsequent loss of control of the helicopter.

DATES: This AD becomes effective June 2, 2015 to all persons except those persons to whom it was made immediately effective by EAD 2015–08–51, issued on April 10, 2015, which contains the requirements of this AD.

We must receive comments on this AD by July 17, 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 AD, the economic 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 service information identified in this AD, contact Enstrom Helicopter Corporation, 2209 22nd Street, Menominee, MI; telephone (906) 863–1200; fax (906) 863–6821; or at *www.enstromhelicopter.com.* You may review the referenced 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: Gregory J. Michalik, Senior Aerospace Engineer, Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, 2300 East Devon Ave., Des Plaines, IL 60018; (847) 294–7135; email *gregory.michalik@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, 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 resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, 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 them 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 rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

On February 12, 2015, we issued EAD 2015–04–51, which was prompted by a fatal accident. Preliminary results of the investigation indicated that the accident was caused by a crack in the spindle, which resulted in the main rotor blade separating from the helicopter. The crack was discovered at the last thread of the spindle retention nut threads. While the investigation could not determine when the crack initiated, it was able to determine that the crack existed, undetected, for a significant amount of time before the separation. EAD 2015–04–51 required, before further flight, conducting a magnetic particle inspection (MPI) in any spindle that had 5,000 or more hours time-in-service (TIS) or where the hours TIS of the spindle is not known. If there was a crack in the spindle, EAD 2015–04–51 required replacing it before further flight. EAD 2015–04–51 also required reporting the inspection results to the FAA within 72 hours.

Since we issued EAD 2015–04–51, inspection reports received by the FAA indicate approximately 20% of the spindles reported with TIS data had evidence of cracks. The FAA also received inspection reports of spindles without TIS data which did not have evidence of cracks. The inspection reports include spindles with cracks at less than 5,000 hours TIS. With analysis of available data, we determined the need to expand the applicability to include spindles with 1,500 or more hours TIS.

On April 10, 2015, we issued EAD 2015–08–51, which supersedes EAD 2015–04–51. EAD 2015–08–51 retains all of the requirements of EAD 2014–04–51 except it reduces the TIS of the spindles to be inspected from 5,000 hours to 1,500 hours. EAD 2015–08–51 was sent previously to all known U.S. owners and operators of these helicopters.

FAA's Determination

We are issuing 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.

Related Service Information

Enstrom has issued Service Directive Bulletin No. 0119, Revision 1, dated April 1, 2015, for all serial numbered Model F–28A, F–28C, F–28F, 280, 280C, 280F, and 280FX helicopters with a main rotor spindle, part number (P/N) 28–14282–11 and 28–14282–13. Enstrom has also issued Service Directive Bulletin No. T–050, Revision 1, dated April 1, 2015, for Model 480 helicopters, serial numbers 5001 through 5004 and 5006, and with a main rotor spindle, P/N 28–14282–13, except those aircraft modified with tension-torsion straps. Both service directives specify, for any spindle that has been in service more than 3,500 hours, within 5 hours TIS, sending the spindle to Enstrom for an MPI. For any spindle with less than 3,500 hours TIS, the service directives specify sending the spindle to Enstrom for an MPI at or before it reaches 3,500 hours TIS. The service directives also specify repeating the MPI every 300 hours for spindles with over 3,500 hours TIS.

AD Requirements

This AD requires conducting an MPI before further flight to determine if a crack exists in any spindle that has 1,500 or more hours TIS or where the hours TIS of the spindle is not known. If there is a crack in the spindle, this AD requires replacing it before further flight. The MPI of the spindle must be conducted by a Level II or Level III inspector qualified in the MPI method in the Aeronautics Sector according to the EN4179 or NAS410 standard or equivalent. This AD also requires reporting certain information to the FAA within 72 hours.

Differences Between This AD and the Service Information

This AD requires that the MPI be conducted by a Level II or Level III inspector or equivalent and that the results of the MPI be reported to the FAA, whereas the service information specifies that the MPI be accomplished by or reported to Enstrom. This AD requires an MPI on spindles with 1,500 or more hours TIS, whereas the service information specifies performing an initial MPI on spindles with 3,500 or more hours TIS. This AD does not require a recurring inspection, whereas the service information specifies to repeat the MPI every 300 hours TIS for spindles with over 3,500 hours TIS. This AD requires the MPI before further

flight, whereas the service information specifies that it be accomplished within 5 hours TIS.

Interim Action

We consider this AD to be an interim action. The inspection reports that are required by this AD will enable us to obtain better insight into the root cause and extent of the cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we might consider further rulemaking.

Costs of Compliance

We estimate that this AD affects 323 helicopters of U.S. Registry and that operators may incur the following costs to comply with this AD. Inspecting the spindles will take about 15 work-hours per helicopter and reporting the required inspection information will take about 0.5 work-hour. We estimate an average labor rate of $85 per work-hour, for a total cost of $1,318 per helicopter and $425,714 for the U.S. fleet. Replacing a spindle will cost $8,164 for parts and no additional work-hours.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting required by this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591. ATTN: Information Collection Clearance Officer, AES–200.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we found and continue to find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the previously described unsafe condition can adversely affect the controllability of the helicopter and the initial required action must be accomplished before further flight.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment before issuing this AD were impracticable and contrary to the public interest and good cause existed to make the AD effective immediately by EAD 2015–08–51, issued on April 10, 2015, to all known U.S. owners and operators of these helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

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

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 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015–08–51 The Enstrom Helicopter Corporation (Enstrom): Amendment 39–18160; Docket No. FAA–2015–1537; Directorate Identifier 2015–SW–014–AD.

(a) Applicability

This AD applies to Enstrom Model F–28A, 280, F–28C, F–28C–2, F–28C–2R, 280C, F–28F, F–28F–R, 280F, and 280FX helicopters, all serial numbers; and Enstrom Model 480 helicopters, serial numbers 5001 through 5006; with a main rotor spindle (spindle), part number (P/N) 28–14282–11 or 28–14282–13, installed, certificated in any category. This AD applies to any helicopter that has a spindle with 1,500 or more hours time-in-service (TIS) or where the hours TIS of the spindle is not known.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in the spindle, which, if not detected, could result in loss of a main rotor blade and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes Emergency AD 2015–04–51, Directorate Identifier 2015–SW–002–AD, dated February 12, 2015.

(d) Effective Date

This AD becomes effective June 2, 2015 to all persons except those persons to whom it was made immediately effective by Emergency AD 2015–08–51, issued on April 10, 2015, which contains the requirements of this AD.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has been accomplished on or after February 11, 2015.

(f) Required Actions

(1) Before further flight, conduct a magnetic particle inspection (MPI) of the spindle to determine if a crack exists, paying particular attention to the threaded portion of the spindle. The MPI of the spindle must be conducted by a Level II or Level III inspector qualified in the MPI in the Aeronautics Sector according to the EN4179 or NAS410 standard or equivalent. If there is a crack in the spindle, replace it with an airworthy spindle before further flight.

(2) Within 72 hours after accomplishing the MPI, report the information requested in Appendix 1 to this AD by mail to the Manager, Chicago Aircraft Certification Office, Federal Aviation Administration, ATTN: Gregory J. Michalik, 2300 East Devon Ave., Des Plaines, IL, 60018; by fax to (847) 294–7834; or email to *gregory.michalik@faa.gov.*

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Chicago Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Gregory J. Michalik, Senior Aerospace Engineer, Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, 2300 East Devon Ave., Des Plaines, IL, 60018; (847) 294–7135; email *gregory.michalik@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.

(3) Any AMOC approved previously in accordance with EAD 2015–04–51, dated February 12, 2015, is approved as an AMOC for the corresponding requirements in paragraph (f)(1) of this AD.

(h) Additional Information

Enstrom Helicopter Corporation Service Directive Bulletin No. 0119, Revision 1, dated April 1, 2015, and Enstrom Helicopter Corporation Service Directive Bulletin No. T–050, Revision 1, dated April 1, 2015, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Enstrom Helicopter Corporation, 2209 22nd Street, Menominee, MI; telephone (906) 863–1200; fax (906) 863–6821; or at *www.enstromhelicopter.com.* You may review this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6220, Main Rotor Head.

Appendix 1 to AD 2015–08–51

Spindle Inspection (Sample Format)

Provide the following information by mail to the Manager, Chicago Aircraft Certification Office, Federal Aviation Administration, ATTN: Gregory J. Michalik, 2300 East Devon Ave., Des Plaines, IL, 60018; by fax to (847) 294–7834; or email to *gregory.michalik@faa.gov.*

Aircraft Registration No.:
Helicopter Model:
Helicopter Serial Number:
Helicopter Owner or Operator:
Contact Phone No.:
Spindle Part Number and Serial Number:
Total Hours Time-in-Service (TIS) on Spindle:
Total Hours TIS on Helicopter (if hours TIS on spindle were not available):
Who Performed the Inspection:
Date and Location Inspection was Accomplished:
Crack Found? If yes, describe the crack size, location, orientation (provide a sketch or picture):
Provide Any Other Comments:

Issued in Fort Worth, Texas, on May 8, 2015.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015–11732 Filed 5–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2015–0282]

Eighth Coast Guard District Annual Marine Event; Mayor's Hike, Bike and Paddle; Ohio River 602.0–603.5; Louisville, KY

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Mayor's Hike, Bike and Paddle marine event for all waters of the Ohio River, beginning at mile marker 602.0 and ending at 603.5, Louisville, KY. This rule will be enforced from 9:00 a.m. to 12:30 p.m. on May 25, 2015.

This action is necessary to protect persons, property, and infrastructure from potential damage and safety hazards associated with the Mayor's Hike, Bike and Paddle. During the enforcement period, deviation from the regulations is prohibited unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or a designated representative.

DATES: The regulations in 33 CFR 100.801, Table 1, Line 35 will be enforced from 9:00 a.m. to 12:30 p.m. on May 25, 2015.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email Petty Officer James C. Robinson, U.S. Coast Guard; telephone 502–779–5347, email *James.c.robinson@uscg.mil* or Petty Officer Stephen F. McConnell, U.S. Coast Guard; telephone 502–779–5334, email *Stephen.F.McConnell@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the ''Mayor's Hike, Bike and Paddle'' marine event in 33 CFR 100.801, Table 1, Line 35 from 9:00 a.m. to 12:30 p.m. on May 25, 2015. These regulations can be found in the Code of Federal Regulations, at 33 CFR 100.801.

Under the provisions of 33 CFR 100.801, a vessel may not enter the regulated area, unless it receives permission from the COTP Ohio Valley or a designated representative. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of official patrol vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 5 U.S.C. 552(a), and 33 U.S.C. 1233. In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners (LNM) and Broadcast Notice to Mariners (BNM). If the COTP Ohio Valley determines that the regulated area need not be enforced for the full duration stated in the notice, he or she may use a BNM to grant general permission to enter the regulated area.

Dated: April 22, 2015.

R.V. Timme,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2015–11941 Filed 5–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2015–0240]

RIN 1625–AA08

Eighth Coast Guard District Annual Special Local Regulation; REV3 Triathlon; Tennessee River 646.0–649.0; Knoxville, TN

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a Special Local Regulation for the ''REV3 Triathlon'' on the Tennessee River mile 646.0 to 649.0 from 7:00 a.m. until 9:30 a.m. on May 17, 2015. This action is necessary for the safeguard of participants and spectators, including all crews, vessels, and persons on navigable waters during the ''REV3 Triathlon.'' During the enforcement period, entry into, transiting or anchoring in the Regulated Area is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or his designated representative.

DATES: The regulations in 33 CFR 100.801, Table 1 Sector Ohio Valley, No. 4 will be enforced from 7:00 a.m. until 9:30 a.m. on May 17, 2015.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call Petty Officer Chad Phillips, Coast Guard Marine Safety Detachment Nashville at 615–736–5421, or *Chad.e.phillips@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Special Local Regulation for the annual ''REV3 Triathlon'' listed in 33 CFR 100.801 Table 1, Sector Ohio Valley, No. 4 on May 17, 2015 from 7:00 a.m. until 9:30 a.m.

Under the provisions of 33 CFR 100.801, entry into the regulated area listed in Table 1, Sector Ohio Valley, No. 4 is prohibited unless authorized by the Captain of the Port or his designated representative. Persons or vessels desiring to enter into or pass through the Special Local Regulation area must request permission from the Captain of the Port or his designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his designated representative.

This notice is issued under authority of 5 U.S.C. 552(a), and 33 U.S.C. 1233. In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and Marine Information Broadcasts.

If the Captain of the Port Ohio Valley or his Patrol Commander determines that the Special Local Regulation need not be enforced for the full duration stated in this notice of enforcement, he or she may use a Broadcast Notice to Mariners to grant permission to enter the regulated area.

Dated: April 22, 2015.

R.V. Timme,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2015–11929 Filed 5–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket Number USCG–2015–0125]

RIN 1625–AA08 and 1625–AA00

Special Local Regulations and Safety Zones; Marine Events Held in the Sector Long Island Sound Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing eight special local regulations for eight separate marine events and establishing six safety zones for fireworks displays within the Coast Guard Sector Long Island Sound (LIS) Captain of the Port (COTP) Zone. This temporary final rule is necessary to provide for the safety of life on navigable waters during these events. Entry into, transit through, mooring or anchoring within these regulated areas and safety zones is prohibited unless authorized by COTP Sector Long Island Sound.

DATES: This rule is effective without actual notice from 12:01 a.m. on May 18, 2015 until 5:30 p.m. on September 20, 2015. For the purposes of enforcement, actual notice will be used from the date the rule was signed, April 22, 2015, until May 18, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2015–0125]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Petty Officer Ian Fallon, Prevention Department, Coast Guard Sector Long Island Sound, telephone (203) 468–4565, email *Ian.M.Fallon@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

COTP Captain of the Port
DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

This rulemaking establishes eight special local regulations for four regattas, two swim events, one fireworks display and one air show and six safety zones for six fireworks displays. Each event and its corresponding regulatory history is discussed below.

Special Local Regulations:

Aquapalooza (regatta): A special local regulation was established in 2014 for the Aquapalooza event when the Coast Guard issued a temporary rule entitled, ''Special Local Regulations and Safety Zones; Marine Events in Captain of the Port Long Island Sound Zone''. This rule was published on August 12, 2014 in the **Federal Register** (79 FR 46997).

Great Peconic Race (regatta): A special local regulation was established in 2014 for the Great Peconic Race event when the Coast Guard issued a temporary rule entitled, ''Special Local Regulation and Safety Zone; Marine Events in Captain of the Port Long Island Sound Zone''. This rule was published on August 29, 2014 in the **Federal Register** (79 FR 51479).

Kayak for Camp (regatta): Is a recurring marine event with no regulatory history.

Connecticut River Raft Race (regatta): A special local regulation was established in 2014 for the Connecticut River Raft Race event when the Coast Guard issued temporary rule entitles, ''Special Local Regulations and Safety Zones; Marine Events in Captain of the Port Long Island Zone''. This rule was published on August 12, 2014 in the **Federal Register** (79 FR 46997).

Fran Schnarr Open Water Championship (Swim): Is a recurring marine event with regulatory history. This event was previously named Huntington Bay Open Water Championships Swim (78 FR 31402, May 24, 2013) and the event is being held in a different location this year.

Riverhead Rocks Triathlon (swim): A special local regulation was established in 2014 for the Riverhead Rocks Triathlon event when the Coast Guard issued a temporary rule entitled, ''Safety

Zones; Marine Events in Captain of the Port Long Island Sound Zone''. This rule was published on August 18, 2014 in the **Federal Register** (79 FR 48685).

Jones Beach State Park (fireworks): Is a reoccurring marine event with regulatory history. This event is in Table 1 to 33 CFR 165.151 (7.19). We will be using a Special Local Regulation this year for this event due to a determination that a safety zone will be insufficient to mitigate the event's extra and unusual hazards.

Jones Beach (Air Show): A special local regulation was established in 2014 for the Jones Beach Air Show event when the Coast Guard issued a final rule entitled, ''Special Local Regulation; Jones Beach Air Show; Atlantic Ocean, Sloop Channel Through East Bay, and Zach's Bay; Wantagh, NY''. This rule was published on May 21, 2014 in the **Federal Register** (79 FR 29088).

Safety Zones:

Village of Saltaire (fireworks): A special local regulation was established in 2014 for the Village of Saltaire event when the Coast Guard issued a temporary rule entitled, ''Safety Zones; Marine Events in Captain of the Port Long Island Sound Zone''. This rulemaking was published on August 18, 2014 in the **Federal Register** (79 FR 48685).

USCG Academy Fireworks Entertainment (fireworks): Is a first time marine event with no regulatory history.

Boys and Girls Club—Beach Ball 2015 (fireworks): Is a first time marine event with no regulatory history.

Marine at American Wharf (fireworks): Is a first time event with no regulatory history.

Cherry Grove Pride Week (fireworks): Is a first time marine event with no regulatory history.

Riverfest (Fireworks): Is a reoccurring marine event with regulatory history. This event is in Table 1 to § 165.151(7.23). This event is in this temporary rule due to deviation from the date and position listed in the § 165.151 regulation.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and unnecessary. The Coast Guard did not receive the information about the events early enough to publish a Notice of Proposed Rulemaking before the scheduled event dates. In addition, publishing an NPRM is unnecessary for this rule because most of these events are familiar to the community as recurring annual community events. Thus, waiting for a comment period to run would inhibit the Coast Guard's ability to fulfill its mission to keep the ports and waterways safe.

Under 5 U.S.C. 553(d)(3), and for the same reasons stated in the preceding paragraph, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.**

B. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1231, 1233; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish regulatory special local regulations and safety zones.

As discussed in the *Regulatory History and Information* section, four regattas, seven fireworks displays, two swim events, and one air show will take place in the Coast Guard Sector LIS COTP Zone between April 25, 2015 and September 20, 2015. The COTP Long Island Sound has determined that the eight special local regulations and the six safety zones established by this temporary final rule are necessary to provide for the safety of life on navigable waterways during those events.

Aquapalooza is a boating event open to the Public that attracts many people and boats into Zach's Bay near Jones Beach State Park in Wantagh, NY. The event sponsor expects to have 500 participants. As such, a large number of boats will be operating in close proximity to each other and to swimmers in a nearby designated swim area. Many of these vessels will be operating at dangerous speeds given the congested conditions during the event and at the conclusion of the vent when a large number of vessels will be departing Zach's Bay within a relatively short period of time. These conditions are especially hazardous for any vessels attempting to navigate in the southbound direction, against the flow of the main vessel traffic at the conclusion of the event. The Coast Guard determined that a special local regulation that restricts vessel speed and the flow of vessel traffic will improve the safety of waterway users.

Kayak for Camp is a kayak and paddleboard event that starts at Harbor View Beach, Norwalk, CT to Green's Ledge Light, Norwalk, CT and back to Harbor View Beach, Norwalk, CT. There are two courses in this event; the first course is broken into two different races with distances of 2 miles and 8 miles and the second course is 4 miles long. One safety boat will be present behind the race participants for assistance.

Great Peconic Race is a kayak, surf ski and paddleboard event that starts and ends at Wades Beach on Shelter Island. The race course circumnavigates Shelter Island with a total distance of 19 miles. On the south shore, two event safety vessels will be present with a member of the South Ferry Company Inc. staff with a red flag to stop and then wave paddlers on for safe crossing. One safety boat will be present on the north shore to assist paddlers as well.

Riverhead Rocks Triathlon will be held in Riverhead, NY, with the swimming portion in the Peconic River. The swim course will be along the shoreline of the river, with life guards and safety boats present to assist the race participants.

Fran Schnarr Open Water Championship Swim is an open water swim event that will be held in Huntington Harbor, Huntington Bay, NY. The race course will be along the north shore of Huntington Bay, NY.

Jones Beach State Park fireworks display attracts thousands of spectators to Jones Beach State Park as well as a significant number of spectator vessels to the waters around Jones Beach State Park. The operation of numerous spectator vessels in such close proximity to each other presents additional hazards to the maritime public. The COTP Sector Long Island Sound has determined that these hazards pose a danger to the maritime public. This special local regulation will temporarily regulate three areas around the Jones Beach State Park fireworks display, including portions of the Atlantic Ocean, the navigable waters between Meadowbrook State Parkway and the Wantagh State Parkway, and Zach's Bay. The three areas will be defined as ''No Entry Area,'' ''Slow/No Wake Area,'' and ''No Southbound Traffic Area.''

Jones Beach Air Show attracts thousands of spectators to Jones Beach State Park as well as a significant number of spectator vessels to the waters around Jones Beach State Park. The operation of numerous spectator vessels in such close proximity to each other presents additional hazards to the maritime public beyond those associated with the aerial activities. The

COTP Sector Long Island Sound has determined that these hazards pose a danger to the maritime public. This special local regulation will temporary regulate three areas around the Jones Beach Air Show, including portions of the Atlantic Ocean, the navigable waters between Meadowbrook State Parkway and the Wantagh State Parkway, and Zach's Bay. The three areas will be defined as ''No Entry Area,'' ''Slow/No Wake Area,'' and ''No Southbound Traffic Area.''

The geographic locations of these regulated areas and the specific requirements of this rule are contained in the regulatory text. This regulation prevents vessels from entering, transiting, remaining, or anchoring within the area designated as a ''No Entry Area'' during the periods of enforcement, unless authorized by the COTP or designated representative. This regulation also partially restricts movement within the ''Slow/No Wake Area'' and the ''No Southbound Traffic Area'' unless authorized by the COTP or designated representative.

Connecticut River Raft Race involves many participants operating human-powered and/or sail-powered vessels of their own design and construction along a stretch of the Connecticut River near Middletown, CT. Due to the hazards facing these participants, including the unknown and/or untested seaworthiness of their vessels and potential limitations to vessel navigation and/or maneuverability, the Coast Guard determined that a special local regulation that restricts vessel speed and operation is needed to protect participants, spectators and other waterway users during the event.

USCG Academy Fireworks Entertainment display will be held on the Thames River in New London, CT.

Boys and Girls Club—Beach Ball 2015 fireworks display will be held on Bellport Bay, Bellport, NY.

Marina at American Wharf fireworks display will be held on the Thames River, Norwich, CT.

Cherry Grove Pride Week fireworks display will be held on Great South Bay, Cherry Grove, NY.

Village of Saltaire fireworks display will be held on Great South Bay, Bay Shore, NY.

Riverfest Fireworks display will be held on the Connecticut River, Hartford, CT.

C. Discussion of the Temporary Final Rule

This rule establishes eight special local regulations for four regattas, two swim events, one fireworks display, and one air show and six safety zones for six fireworks displays. The locations of these special regulated areas and safety zones are described in the regulatory text.

The fireworks displays will launch pyrotechnics from either a barge or a landsite near a waterway. A regulated area, specifically a safety zone, is required for each of these fireworks displays to protect both spectators and participants from the safety hazards created by the burning debris.

The special local regulation established for Aquapalooza includes two measures to reduce the risks to waterways users of Zach's Bay before, during, and after the event. The first measure restricts vessel movement within the regulated area to no wake speed or 6 knots, whichever is slower on July 26, 2015 from 11:30 a.m. to 8 p.m. The second measure restricts all vessel movement within the regulated area to the outbound or northbound direction on July 26, 2015 from 3 p.m. to 5:30 p.m.

Kayak for Camp is a rowing regatta that will take place in Norwalk Harbor near Norwalk, CT. This special local regulation proposes two temporary regulated areas to restrict vessel movement within the regulated areas of Norwalk Harbor to no wake speeds or 6 knots, whichever is slower.

Great Peconic Race regulated area would encompass all navigable waters of the United States of the Peconic River, Shelter Island, NY, inside two areas. This special local regulation proposes two temporary regulated areas in which event non-participants must travel at a no-wake speed and remain vigilant at all times for event participants. Additionally, recreational vessels must yield right-of-way for event participants and event safety craft, and follow directions given by event representatives during the event. Commercial vessels will have right-of-way over event participants and event safety craft.

Riverhead Rocks Triathlon incorporates swim legs that will place many swimmers in the navigable waters of the Peconic River. A regulated area is required to minimize the hazards posed by spectators and other waterway users operating their vessels in close proximity to the event participants. The special local regulation established for this swim event will minimize the risks to the event participants from this type of boat traffic and improve visibility and maneuverability for the safety vessels supporting the swim event.

Fran Schnarr Open Water Championship Swim will place many swimmers in the navigable waters of Huntington Harbor. A regulated area is required to minimize the hazards posed by spectators and other waterway users operating their vessels in close proximity to the event participants. The special local regulation established for this swim event will minimize the risks to the event participants from this type of boat traffic and improve visibility and maneuverability for the safety vessels supporting the swim event.

Jones Beach State Park fireworks display attracts thousands of spectator craft every year to Jones Beach State Park. Three regulated areas will be set to address the safety concerns with high vessel traffic. A ''No Entry Area'' will be set around the fireworks barge to ensure spectators maintain a safe distance from the barge. A ''Slow/No Wake Area'' will be set in the navigable waters between Meadow Brook State Parkway and Wantagh State Parkway. All vessels in the area will operate at ''No Wake'' speed or up to 6 knots, whichever is slower. A ''No Southbound Traffic Area'' will be set in all waters of Zach's Bay. No southbound vessel traffic will be allowed into or within this area.

Jones Beach Air Show involves numerous aircraft performing various aerial maneuvers which present multiple hazards, including those associated with in-flight accidents. This event attracts thousands of spectators and spectator craft which pose their own hazards. Three regulated areas will be set to address the safety concerns. A ''Slow/No Wake Area'' will be set in the navigable waters between Meadow Brook State Parkway and Wantagh State Parkway. All vessels in the area will operate at ''No Wake'' speed or up to 6 knots, whichever is slower. A ''No Southbound Traffic Area'' will be set in all waters of Zach's Bay. No southbound vessel traffic will be allowed into or within this area.

The special local regulation established for the Connecticut River Raft Race restricts vessel movement within the regulated area of the Connecticut River to no wake speed or 6 knots, whichever is slower, and also stipulates that vessels must not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas unless authorized by COTP or designated representatives.

This rule prevents vessels from entering, transiting, mooring, or anchoring within areas specifically designated as safety zones and establishes additional vessel movement rules within areas specifically under the jurisdiction of the special local regulations during the periods of enforcement unless authorized by the COTP or designated representative.

Public notifications will be made to the local maritime community prior to each event through the Local Notice to Mariners and Broadcast Notice to Mariners.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The Coast Guard determined that this rulemaking is not a significant regulatory action for the following reasons: The enforcement of these regulated areas and safety zones will be relatively short in duration. Also, persons or vessels desiring entry into a regulated area or a deviance from the stipulations within a regulated area may be authorized to do so by the COTP Sector Long Island Sound or designated representative. Additionally, persons or vessels desiring to enter a safety zone may do so with permission from the COTP Sector Long Island Sound or designated representative. Furthermore, these special local regulations and safety zones are designed in a way to limit impacts on vessel traffic, permitting vessels to navigate in other portions of the waterways not designated as a regulated area or as a safety zone. Finally, to increase public awareness of these special local regulations and safety zones, the Coast Guard will notify the public of the enforcement of this rule via appropriate means, such as via 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 rule will not have a significant economic impact on a substantial number of small entities.

This temporary final rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit, anchor, or moor within a regulated area or a safety zone during the periods of enforcement, from April 25, 2015 to September 20, 2015. However, this temporary final rule will not have a significant economic impact on a substantial number of small entities for the same reasons discussed in the Regulatory Planning and Review section.

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. 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 an 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of special local regulations and safety zones. This rule is categorically excluded from further review under paragraph 34(g) and (h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 100 and 165 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 § 100.35T01–0125 to read as follows:

§ 100.35T01–0125 Special Local Regulations; Marine Events in Captain of the Port Long Island Sound Zone.

(a) *Regulations.* The general regulations contained in 33 CFR 100.35 as well as the following regulations apply to the marine events listed in Table to § 100.35T01–0125.

(b) *Enforcement periods.* This section will be enforced on the dates and times listed for each event in Table to § 100.35T01–0125.

(c) *Definitions.* The following definitions apply to this section:

Designated Representative. A ''designated representative'' is any commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. While members of the Coast Guard Auxiliary will not serve as the designated representative, they may be present to inform vessel operators of this regulation.

Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) Vessel operators desiring to enter or operate within the regulated areas shall contact the COTP at 203–468–4401 (Sector Long Island Sound command center) or the designated representative via VHF channel 16.

(e) Vessels may not transit the regulated areas without the COTP or designated representative approval. Vessels permitted to transit must operate at a no wake speed or 6 knots, whichever is slower, and operate in a manner which will not endanger event participants or other crafts in the event.

(f) The COTP or designated representative may control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel must come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(g) The COTP or designated representative may delay or terminate any marine event in this section at any time it is deemed necessary to ensure the safety of life or property.

(h) The additional stipulations listed in Table to § 100.35T01–0125 also apply for the event in which they are listed.

TABLE TO § 100.35T01–0125

1 Jones Beach Air Show	• Date: May 21 through 24, 2015. • Time: (1) The ''No Entry Area'' will be enforced each day from the start of the air show until 30 minutes after it concludes. (2) The ''Slow/No Wake Area'' and the ''No Southbound Traffic Area'' will be enforced each day for 6 hours after the air show concludes. • Location: ''No Entry Area'': Waters of the Atlantic Ocean off Jones Beach State Park, Wantagh, NY contained within the following described area; Beginning in approximate position 40°34′54″ N, 073°33′21″ W, then running east along the shoreline of Jones Beach State Park to approximate position 40°35′53″ N, 073°28′48″ W; then running south to a position in the Atlantic Ocean off of Jones Beach at approximate position 40°35′05″ N, 073°28′34″ W; then running West to approximate position 40°33′15″ N, 073°33′09″ W; then running North to the point of origin.

TABLE TO § 100.35T01–0125—Continued

		"Slow/No Wake Area": All navigable waters between Meadowbrook State Parkway and Wantagh State Parkway and contained within the following area. Beginning in approximate position 40°35′49.01″ N 73°32′33.63″ W then north along the Meadowbrook State Parkway to its intersection with Merrick Road in approximate position 40°39′14.00″ N 73°34′00.76″ W then east along Merrick Road to its intersection with Wantagh State Parkway in approximate position 40°39′51.32″ N 73°30′43.36″ W then south along the Wantagh State Parkway to its intersection with Ocean Parkway in approximate position 40°35′47.30″ N 73°30′29.17″ W then west along Ocean Parkway to its intersection with Meadowbrook State Parkway at the point of origin in approximate position 40°35′49.01″ N 73°32′33.63″ W. "No Southbound Traffic Area": All navigable waters of Zach's Bay south of the line connecting a point near the western entrance to Zach's Bay in approximate position 40°36′29.20″ N, 073°29′22.88″ W and a point near the eastern entrance of Zach's Bay in approximate position 40°36′16.53″ N, 073°28′57.26″ W.
2	Jones Beach State Park Fireworks	• Date: July 4, 2015. • Rain Date: July 5, 2015. • Time: 9 p.m. to 10:25 p.m. • "No Entry Area": All waters off of Jones Beach State Park, Wantagh, NY within a 1000 foot radius of the launch platform in approximate position 40°34′56.68″ N, 073°30′31.19″ W (NAD 83).] "Slow/No Wake Area": All navigable waters between Meadowbrook State Parkway and Wantagh State Parkway and contained within the following area. Beginning in approximate position 40°35′49.01″ N 73°32′33.63″ W then north along the Meadowbrook State Parkway to its intersection with Merrick Road in approximate position 40°39′14.00″ N 73°34′00.76″ W then east along Merrick Road to its intersection with Wantagh State Parkway in approximate position 40°39′51.32″ N 73°30′43.36″ W then south along the Wantagh State Parkway to its intersection with Ocean Parkway in approximate position 40°35′47.30″ N 73°30′29.17″ W then west along Ocean Parkway to its intersection with Meadowbrook State Parkway at the point of origin in approximate position 40°35′49.01″ N 73°32′33.63″ W. "No Southbound Traffic Area": All navigable waters of Zach's Bay south of the line connecting a point near the western entrance to Zach's Bay in approximate position 40°36′29.20″ N, 073°29′22.88″ W and a point near the eastern entrance of Zach's Bay in approximate position 40°36′16.53″ N, 073°28′57.26″ W.
3	Kayak For Camp	• Date: July 11, 2015. • Time: 4:30 a.m. to 1:30 p.m. • Location: The regulated area includes all navigable waterways of Norwalk Harbor, Norwalk, CT within 100 yards of the two regatta courses. *Course one* begins at a point on land near Harbor View Beach, Norwalk, CT at position 41°05′00″; 073°23′55.80″ W and then west to a point in Norwalk Harbor at position 41°04′56.44″ N; 073°24′07.80″ W and then south to point in Norwalk Harbor near Green Buoy 15 at position 41°04′50.16″ N; 073°24′07.20″ W and then south to a point in Norwalk Harbor near Green Buoy 13 at position 41°04′40.86″ N; 073°24′90.00″ W and the south west to a point in Norwalk Harbor near NRG Norwalk at position 41°04′12.24″ N; 073°24′30.00″ W and then south west to a point in Long Island Sound near Tavern Island at position 41°03′ 29.94″ N; 073°25′35.00″ W and then south west to a point in Long Island Sound near green buoy 1A at position 41°02′ 55.26″ N; 073°26′15.60″ W and then south west to a point in Long Island Sound near Green's Ledge Light at position 41°02′28.62″ N; 073°26′43.80″ W and then east to a point in Long Island Sound near Green's Ledge Light at position 41°02′26.88″ N; 073°26′35.40″ W and then north to a point in Long Island Sound at position 41°02′55.26″ N; 073°26′ 15.60″ W and then north back to point of origin.

TABLE TO § 100.35T01–0125—Continued

		Course two begins at a point on land near Harbor View Beach, Norwalk, CT at position 41°05′00.00″; 073°23′55.80″ W and then west to a point in Norwalk Harbor at position 41°04′56.44″ N; 073°24′07.80″ W and then south to point in Norwalk Harbor near Green Buoy 15 at position 41°04′50.16″ N; 073°24′07.20″ W and then south to a point in Norwalk Harbor near Green Buoy 13 at position 41°04′40.86″ N; 073°24′90.00″ W and the south west to a point in Norwalk Harbor near NRG Norwalk at position 41°04′12.24″ N; 073°24′30.00″ W and then west to a point in Long Island Sound near Tavern Island at position 41°03′49.56″ N; 073°25′22.80″ W and the south to a point in Long Island Sound near Tavern Island at position 41°03′35.46″ N; 073°25′27.00″ W and then south east to a point in Long Island Sound near Tavern Island at position 41°03′32.76″ N; 073°25′19.20″ W and then north east to the point of origin (NAD 83). • Additional stipulations: Vessel speed in the regulated area is restricted to no wake speed or 6 knots, whichever is slower.
4	Fran Schnarr Open Water Championship	• Date: July 12, 2015. • Time: 7:45 a.m. to 1 p.m. • Location: All waters of Northport Bay, Huntington, NY within the area with the point of origin in Northport Bay at position 40°54′25.8″ N 073°24′28.8″ W and then east to a point in Northport Bay at position 40°54′31.2″ N 073°25′21.0″ W and then south east to a point in Northport Harbor at position 40°54′45.0″ N 073°23′36.6″ W and then east to the point of origin (NAD 83).
5	Connecticut River Raft Race	• Date: July 25, 2015. • Time: 9:30 a.m. to 2:30 p.m. • Location: All waters of the Connecticut River near Middletown, CT between Gildersleeve Island (Marker no. 99) 41°36′02.13″ N 072°37′22.71″ W and Portland Riverside Marina (Marker no. 88) 41°33′38.30″ N 072°37′36.53″ W (NAD 83). Additional Stipulations: Vessels must not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas unless authorized by COTP or designated representative.
6	Aquapalooza	• Event type: Regatta. • Date: July 26, 2015. • Time: 11:30 a.m. to 8:30 p.m. • Location: All navigable waters of Zach's Bay south of the line connecting a point near the western entrance to Zach's Bay in approximate position 40°36′29.20″ N, 073°29′22.88″ W and a point near the eastern entrance of Zach's Bay in approximate position 40°36′16.53″ N, 073°28′57.26″ W. • Additional stipulations: On July 26, 2015 from 11:30 a.m. to 8 p.m. vessel speed in the regulated area is restricted to no wake speed or 6 knots, whichever is slower. On July 26, 2015 from 3 p.m. to 5:30 p.m. vessels may only transit the regulated area in the northbound direction or outbound direction.
7	Riverhead Rocks Triathlon	• Date: August 9, 2015. • Time: 6:20 a.m. to 8:30 a.m. • Location: All waters of the Peconic River, Riverhead, NY within the area bounded to the west by a line connecting points at 40°54′58.09″ N 072°39′37.56″ W on the northern bank and 40°54′56.74″ N 072°39′37.56″ W on the southern bank and bounded to the east by a line connecting points at 40°55′01.92″ N 072°38′51.08″ W on the northern bank and 40°54′59.15″ N 072°38′51.08″ W on the southern bank (NAD 83).

TABLE TO § 100.35T01–0125—Continued

8 Great Peconic Races	• Date: September 20, 2015. • Time: 7:30 a.m. to 5:30 p.m. • Location: The regulated area includes all U.S. navigable waters of the Peconic River, Shelter Island, NY, of the Peconic River, Shelter Island, NY, inside two areas. The first area bound by a line extending from a point on land at Beach Point at position 41°06′25.66″ N; 072°20′04.95″ W and then straight across the Peconic River to a point on land near Cleaves Point at position 41°06′43.70″ N; 072°20′31.99″ W and then west along the shoreline to a point on land near Brick Cove Marina at position 41°04′44.91″ N; 072°23′06.25″ W and then straight across the Peconic River to a point on land near Jennings Point at position 41°04′20.46″ N; 072°22′57.60″ W and then east along the shoreline back to the point of origin (NAD 83). The second area would be bound by a line starting at a point on land near West Neck Point at position 41°02′48.14″ N; 072°20′19.34″ W and then straight across the Peconic River to a point on land near Gleason Point at position 41°02′04.91″ N; 072°19′54.47″ W and then east along the shoreline to a point on land at position 41°01′07.56″ N; 072°17′53.34″ W and the straight across the Peconic River to a point on land near Mashomack Point at position 41°01′44.68″ N; 072°16′54.87″ W and then west along the shoreline back to origin (NAD 83). Additional stipulations: Vessel speed in the regulated area is restricted to no wake speed or 6 knots, whichever is slower. Recreational vessels transiting in the regulated area must yield right-of-way for event participant and event safety craft and must follow directions given by event representatives during the event. Commercial vessel will have right-of-way over the event participants, and event safety craft.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 4. Add § 165.T01–0125 to read as follows:

§ 165.T01–0125 Safety Zones; Fireworks Displays in Captain of the Port Long Island Sound Zone.

(a) *Regulations.* The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the events listed in Table 1 to § 165.T01–0125.

(b) *Enforcement period.* This rule will be enforced on the dates and times listed for each event in Table 1 to § 165.T01–0125. If the event is delayed by inclement weather, the safety zone will be enforced on the rain date indicated in Table 1 to § 165.T01–0125.

(c) *Definitions.* The following definitions apply to this section:

Designated Representative. A ''designated representative'' is any commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. While members of the Coast Guard Auxiliary will not serve as the designated representative, they may be present to inform vessel operators of this regulation.

Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) Vessels desiring to enter or operate within a safety zone should contact the COTP or the designated representative via VHF channel 16 or by telephone at (203) 468–4401 to obtain permission to do so. Vessels given permission to enter or operate in a safety zone must comply with all directions given to them by the COTP Sector Long Island Sound or the designated on-scene representative.

(e) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(f) Fireworks barges used in these locations will also have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY.'' This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background.

TABLE 1 TO § 165.T01–0125

Fireworks Events	
1 USCG Academy Fireworks Entertainment	• Date: April 25, 2015. • Time: 9:45 p.m. to 10:55 p.m. • Location: All waters of the Thames River near New London, CT within 350 feet of the land launch site in approximate position 41°22′28.03″ N, 072°05′48.81″ W (NAD 83).

TABLE 1 TO § 165.T01–0125—Continued

2 Boys and Girls Club—Beach Ball 2015 Fireworks	• Date: June 20, 2015. • Rain Date: June 21, 2015. • Time: 8:45 p.m. to 9:45 p.m. • Location: All waters of Great South Bay near Bellport, NY within 600 feet of the fireworks barge located in approximate position 40°44′39.19″ N, 073°56′27.72″ W (NAD 83).
3 Marina at America Wharf Fireworks	• Date: June 20, 2015. • Rain Date: June 21, 2015. • Time: 9 p.m. to 11 p.m. • Location: All waters of Thames River near Norwich, CT within 400 feet of the fireworks barge located in approximate position 41°31′16.835″ N, 072°04′43.327″ W (NAD 83).
4 Cherry Groves Pride Week Fireworks	• Date: June 20, 2015. • Rain Date: June 21, 2015. • Time: 8:50 p.m. to 9:50 p.m. • Location: All waters of Great South Bay near Fire Island, NY within 600 feet of the fireworks barge located in approximate position 40°39′49.06″ N, 073°05′27.99″ W (NAD 83).
5 Riverfest Fireworks	• Date: July 11, 2015. • Time: 8:30 p.m. to 10:30 p.m. • Location: All waters of Connecticut River near Hartford, CT within 500 feet of the fireworks barges located in approximate positions 41°45′41.94″ N, 072°39′50.74″ W and 41°54′38.30″ N, 072°39′48.19″ W (NAD 83).
6 Village of Saltaire Fireworks	• Date: August 1, 2015. • Rain Date: September 5, 2015. • Time: 8 p.m. to 10 p.m. • Location: All waters of Saltaire Bay near Saltaire, NY within 600 feet of the fireworks barge located in approximate position 40°38′38.60″ N, 073°12′05.06″ W (NAD 83).

Dated: April 22, 2015.

E.J. Cubanski, III,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2015–11930 Filed 5–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0271]

Drawbridge Operation Regulations; New River, Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard is issuing a temporary deviation from the operating schedule that governs the Florida East Coast Railway (FEC) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, FL. This deviation will test a change to the drawbridge operation schedule to address the inability of the bridge owner, FEC, to operate the bridge under current regulations.

DATES: This deviation is effective from 6 a.m. on May 18, 2015 through 6 a.m. on October 16, 2015.

Comments and related material must be received by the Coast Guard on or before August 17, 2015. Requests for public meetings must be received by the Coast Guard on or before June 16, 2015.

ADDRESSES: You may submit comments identified by docket number USCG–2015–0271 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 test deviation, call or email Robert Glassman at telephone 305–415–6746, email *Robert.s.glassman@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:

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 (USCG–2015–0271), 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, type the docket number [USCG–2015–0271] 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–2015–0271) 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 June 16, 2015, using one of the four 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. Background Information

The bridge owner, FEC Railway, requested permission to operate the FEC Railroad Bridge across the New River with an automated system. The FEC Railroad Bridge in Fort Lauderdale, FL has a vertical clearance of 4 feet at mean high water in the closed position and horizontal clearance of 60 feet. Traffic on the waterway includes both commercial and recreational vessels.

Presently, in accordance with 33 CFR 117.5, the bridge is required to open on signal for the passage of vessels. The bridge is usually maintained in the open to navigation position and only closes for train traffic.

The bridge owner, FEC, determined that by installing an automated system, vessel transit will be more efficient. This automated system allows the railroad dispatcher to receive a signal that the bridge must close for approaching trains. The dispatcher will then be advised when trains clear the bridge so it can reopen.

Any vessel requesting a bridge opening must contact the bridge tender via telephone or radiotelephone (marine radio) on VHF–FM channel 9 or 16 to coordinate safe passage through the bridge. The tender must provide information to include, but not limited to authorization for the vessel to continue its transit when the bridge is open to navigation, or the tender must advise that the vessel will have to wait because a train is approaching. If a vessel is required to wait, the bridge tender must indicate the amount of time the vessel will have to wait until the train is clear of the bridge. The FEC Dispatch number and bridge tender phone number will be posted at the bridge so they can be seen by vessels approaching from either direction. The bridge tender's number is 305–889–5572 and the FEC Dispatch number is 800–342–1131.

This deviation seeks comments on FEC's operating schedule and tests an automatic operating system as the method for operating the bridge to determine whether a permanent change to operations can be approved. The deviation period will run from 6 a.m. on May 18, 2015 through 6 a.m. on October 16, 2015.

During the test deviation period, the draw of the FEC Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, FL, will operate as follows:

(a) The bridge is constantly tended.

(b) The bridge tender will utilize a VHF–FM radio to communicate on channels 9 and 16 and may be contacted by telephone at 305–889–5572.

(c) Signage will be posted displaying VHF radio contact information and the bridge tender and dispatch telephone number. A countdown clock for bridge closure shall be posted at the bridge site and visible for maritime traffic.

(d) A bridge log will be maintained including, at a minimum, bridge opening and closing times.

(e) When the draw is in the fully open position, green lights will be displayed to indicate that vessels may pass.

(f) When a train approaches, the lights go to flashing red and a horn starts four blasts, pauses, and then continues four blasts then the draw lowers and locks.

(g) After the train has cleared the bridge, the draw opens and the lights return to green.

(h) The bridge shall not be closed more than 60 minutes combined for any 120 minute time period beginning at 12:01 a.m.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 22, 2015.

Barry Dragon,

Bridge Administrator, U.S. Coast Guard, Seventh Coast Guard District.

[FR Doc. 2015–11931 Filed 5–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0415]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the upper deck of the Steel Bridge, mile 12.1, and the Burnside Bridge, mile 12.4, both crossing the Willamette River, at Portland, OR. The deviation is necessary to accommodate the route of the annual Rose Festival Parade event, which crosses the Steel Bridge and Burnside Bridge. This deviation allows the upper deck of the Steel Bridge and Burnside Bridge to remain in the closed-to-navigation position and need not open for marine traffic to allow for the safe movement of event participants and cleanup crew.

DATES: This deviation is effective from 7 a.m. to 2 p.m. on June 6, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0415] 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 deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: TriMet Public Transit and Multnomah County have requested that the upper deck of the Steel Bridge and the Burnside Bridge remain in the closed-to-navigation position to accommodate the annual Rose Festival Parade event. The Steel Bridge, mile 12.1, and the Burnside Bridge, mile 12.4, both cross the Willamette River.

The Steel Bridge is a double-deck lift bridge with a lower lift deck and an upper lift deck which operate independent of each other. When both decks are in the down position the bridge provides 26 feet of vertical clearance. When the lower deck is in the up position, the bridge provides 71 feet of vertical clearance. This deviation does not affect the operating schedule of the lower deck which opens on signal.

The normal operating schedule for the upper deck of the Steel Bridge operates in accordance with 33 CFR 117.897(c)(3)(ii) which states from 8 a.m. to 5 p.m. Monday through Friday one hour advance notice shall be given for draw openings, and at all other times two hours advance notice shall be given to obtain an opening.

The Burnside Bridge provides a vertical clearance of 64 feet in the closed-to-navigation position. The normal operating schedule for the Burnside Bridge operates in accordance with 33 CFR 117.897(c)(3)(iii) which states from 8 a.m. to 5 p.m. Monday through Friday, one hour's notice shall be given for draw openings. At all other times, two hours notice is required. The Steel Bridge and Burnside Bridge clearances are above Columbia River Datum 0.0.

The deviation period is from 7 a.m. to 2 p.m. on June 6, 2015 to accommodate the route of the annual Rose Festival Parade event. The deviation allows the upper deck of the Steel Bridge, mile 12.1, and the Burnside Bridge, mile 12.4, both crossing the Willamette River, to remain in the closed-to-navigation position and need not open for maritime traffic from 7 a.m. to 2 p.m. on June 6, 2015. Waterway usage on this part of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft.

Vessels able to pass through the Steel Bridge and Burnside Bridge in the closed positions may do so at anytime. The bridges will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridges so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 12, 2015.

Steven M Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2015–11831 Filed 5–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0063]

Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zones for annual firework displays in the Captain of the Port, Puget Sound Zone during the dates and times noted below. This action is necessary to prevent injury and to protect life and property of the maritime public from the hazards associated with the firework displays. During the enforcement periods, entry into, transit through, mooring, or anchoring within these safety zones is prohibited unless authorized by the Captain of the Port, Puget Sound or their Designated Representative.

DATES: The regulations in 33 CFR 165.1332 will be enforced between July 4 and July 12, 2015.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email MST1 Kenneth Hoppe, Sector Puget Sound Waterways Management, Coast Guard; telephone 206–217–6051, *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones established for Annual Fireworks Displays within the Captain of the Port, Puget Sound Area of Responsibility in 33 CFR 165.1332 during the dates and times noted below.

The following safety zones will be enforced from 5:00 p.m. on July 4, 2015 through 1:00 a.m. on July 5, 2015.

Event name	Location	Latitude	Longitude	Radius (yards)
Tacoma Freedom Fair	Commencement Bay	47°17.103′ N	122°28.410′ W	300
City of Renton Fireworks	Renton, Lake Washington	47°30.386′ N	122°12.502′ W	100
Des Moines Fireworks	Des Moines	47°24.117′ N	122°20.033′ W	200
Three Tree Point Community Fireworks	Three Tree Point	47°27.033′ N	122°23.15′ W	200
Roche Harbor Fireworks	Roche Harbor	48°36.7′ N	123°09.5′ W	200
Deer Harbor Annual Fireworks Display	Deer Harbor	48°37.0′ N	123°00.25′ W	150
Blast Over Bellingham	Bellingham Bay	48°44.933′ N	122°29.667′ W	300

The following safety zone will be enforced from 5:00 p.m. on July 11, 2015 through 1:00 a.m. on July 12, 2015:

Event name	Location	Latitude	Longitude	Radius (yards)
Mercer Island Celebration	Mercer Island	47°35.517′ N	122°13.233′ W	250

The special requirements listed in 33 CFR 165.1332, which published in the **Federal Register** on June 15, 2010 (75 FR 33700), apply to the activation and enforcement of these safety zones. All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or their Designated Representative by contacting the Coast Guard Sector Puget Sound Joint Harbor Operations Center (JHOC) on VHF Ch 13 or Ch 16 or via telephone at (206) 217–6002.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 33 CFR 165.1332 and 33 CFR part 165 and 5 U.S.C. 552(a). In addition to this document, the Coast Guard will provide the maritime community with extensive advanced notification of the safety zones via the Local Notice to Mariners and marine information broadcasts on the day of the events.

Dated: May 1, 2015.

M.W. Raymond,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2015–11937 Filed 5–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS–R7–SM–2013–0065; FXFR13350700640–156–FF07J00000; FBMS#4500076030]

RIN 1018–AZ67

Subsistence Management Regulations for Public Lands in Alaska—2015–16 and 2016–17 Subsistence Taking of Fish Regulations

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of fish for subsistence uses in Alaska during the 2015–2016 and 2016–2017 regulatory years. The Federal Subsistence Board (Board) completes the biennial process of revising subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable biennial cycle.

DATES: This rule is effective May 18, 2015.

ADDRESSES: The Board meeting transcripts are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, AK 99503, or on the Office of Subsistence Management Web site (*http://www.doi.gov/subsistence/index.cfm*).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Eugene R. Peltola, Jr., Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Thomas Whitford, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743–9461 or *twhitford@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this program in the **Federal Register** on June 29, 1990 (55 FR 27114), and published final regulations in the **Federal Register** on May 29, 1992 (57 FR 22940). The Program has subsequently amended these regulations a number of times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and Title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–242.28 and 50 CFR 100.1–100.28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs;
- The Alaska Regional Forester, U.S. Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Advisory Council. The Regional Advisory Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

The Board addresses customary and traditional use determinations during the applicable biennial cycle. Section __ __.24 (customary and traditional use determinations) was originally published in the **Federal Register** on May 29, 1992 (57 FR 22940). The regulations at 36 CFR 242.4 and 50 CFR 100.4 define ''customary and traditional use'' as ''a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation. . . .'' Since 1992, the Board has made a number of customary and traditional use determinations at the request of affected subsistence users. Those modifications, along with some administrative corrections, were published in the **Federal Register** as follows:

MODIFICATIONS TO § ____.24

Federal Register citation	Date of publication	Rule made changes to the following provisions of ____.24
59 FR 27462	May 27, 1994	Wildlife and Fish/Shellfish.
59 FR 51855	October 13, 1994	Wildlife and Fish/Shellfish.
60 FR 10317	February 24, 1995	Wildlife and Fish/Shellfish.
61 FR 39698	July 30, 1996	Wildlife and Fish/Shellfish.
62 FR 29016	May 29, 1997	Wildlife and Fish/Shellfish.
63 FR 35332	June 29, 1998	Wildlife and Fish/Shellfish.
63 FR 46148	August 28, 1998	Wildlife and Fish/Shellfish.
64 FR 1276	January 8, 1999	Fish/Shellfish.
64 FR 35776	July 1, 1999	Wildlife.
65 FR 40730	June 30, 2000	Wildlife.
66 FR 10142	February 13, 2001	Fish/Shellfish.
66 FR 33744	June 25, 2001	Wildlife.
67 FR 5890	February 7, 2002	Fish/Shellfish.
67 FR 43710	June 28, 2002	Wildlife.
68 FR 7276	February 12, 2003	Fish/Shellfish.
69 FR 5018	February 3, 2004	Fish/Shellfish.
69 FR 40174	July 1, 2004	Wildlife.
70 FR 13377	March 21, 2005	Fish/Shellfish.
70 FR 36268	June 22, 2005	Wildlife.
71 FR 15569	March 29, 2006	Fish/Shellfish.
71 FR 37642	June 30, 2006	Wildlife.
72 FR 12676	March 16, 2007	Fish/Shellfish.
72 FR 73426	December 27, 2007	Wildlife/Fish.
73 FR 35726	June 26, 2008	Wildlife.
74 FR 14049	March 30, 2009	Fish/Shellfish.
75 FR 37918	June 30, 2010	Wildlife.
76 FR 12564	March 8, 2011	Fish/Shellfish.
77 FR 35482	June 13, 2012	Wildlife.
79 FR 35232	June 19, 2014	Wildlife.

Current Rule

The Departments published a proposed rule on January 10, 2014 (79 FR 1791), to amend the fish section of subparts C and D of 36 CFR part 242 and 50 CFR part 100. The proposed rule opened a comment period, which closed on March 28, 2014. The Departments advertised the proposed rule by mail, radio, and newspaper, and comments were submitted via *www.regulations.gov* to Docket No. FWS–R7–SM–2013–0065. During that period, the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. The Board received a total of 18 proposals for changes to subparts C and D; this included one proposal that the Board had deferred from the previous regulatory cycle. After the comment period closed, the Board prepared a booklet describing the proposals and distributed it to the public. The proposals were also available online. The public then had an additional 30 days in which to comment on the proposals for changes to the regulations.

The 10 Regional Advisory Councils met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. The Regional Advisory Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, a Council Chair, or a designated representative, presented each Council's recommendations at the Board's public meeting of January 21–23, 2015. These final regulations reflect Board review and consideration of Regional Advisory Council recommendations and public comments. The public received extensive opportunity to review and comment on all changes.

Of the 18 proposals, 10 were on the Board's regular agenda and 8 were on the consensus agenda. The consensus agenda is made up of proposals for which there is agreement among the affected Subsistence Regional Advisory Councils, a majority of the Interagency Staff Committee members, and the Alaska Department of Fish and Game concerning a proposed regulatory action. Any Board member may request that the Board remove a proposal from the consensus agenda and place it on the non-consensus (regular) agenda. The Board votes en masse on the consensus agenda after deliberation and action on all other proposals.

Of the proposals on the consensus agenda, the Board adopted one, adopted one with modification, took no action on one, and rejected five. The adopted consensus proposals are reflected in the rule portion of this document and consist of the addition of a definition to § ___.25 and the addition of the last two subparagraphs in § ____.27 ((e)(13)(xx) and (xxi)). Analysis and justification for each action are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, AK 99503, or on the Office of Subsistence Management Web site (*http://www.doi.gov/subsistence/*

index.cfm). Of the proposals on the regular agenda, the Board adopted three; adopted two with modification; rejected two; and took no action on three.

Summary of Non-Consensus Proposals Not Adopted by the Board

The Board rejected or took no action on five non-consensus proposals. The rejected proposals were recommended for rejection by one or more of the Regional Advisory Councils unless noted below.

Yukon—Northern Area

The Board rejected a proposal to restrict the use of driftnets in selected districts of the Yukon River. This action would have been unnecessarily restrictive to subsistence users and was not supported by substantial evidence. This action was supported by three Councils and contrary to the recommendation of one Council.

Kuskokwim Area

The Board took no action on one proposal to allow the use of dipnets with provisions to require the release of Chinook salmon. This decision was based on the Board's earlier action on a similar proposal allowing the use of dipnets.

Southeastern Alaska Area

The Board rejected a proposal to require the immediate recording of harvested Steelhead on Prince of Wales Island, because the in-season manager could include the provision as a permit condition.

The Board took no action on two proposals for the Stikine River. One proposal requested to change the subsistence Sockeye salmon annual guideline harvest level, and the second requested a requirement to check the nets every 2 hours. These decisions were based on its earlier action on a similar proposal requiring nets to be checked twice daily and eliminating the harvest level.

Summary of Non-Consensus Proposals Adopted by the Board

The Board adopted or adopted with modification five non-consensus proposals. Modifications were suggested by the affected Regional Council(s), developed during the analysis process, or developed during the Board's public deliberations. All of the adopted proposals were recommended for adoption by at least one of the Regional Councils unless noted below.

Kuskokwim Area

The Board adopted a proposal to allow the use of dipnets for the harvest of salmon on the Kuskokwim River. This action provides subsistence users an additional gear type that could be used when gillnet restrictions are in place for conservation concerns.

Cook Inlet Area

The Board adopted a proposal with modification to establish an experimental community gillnet fishery on the Kasilof River for the residents of Ninilchik. This action provides additional opportunity for subsistence users.

The Board adopted a proposal to establish a community gillnet fishery on the Kenai River for the residents of Ninilchik. This action provides additional opportunity for subsistence users.

Southeastern Alaska Area

The Board adopted with modification a proposal requiring nets to be checked twice daily and eliminating the guideline harvest limits on the Stikine River. The change of the guideline harvest levels will require amending the Pacific Salmon treaty, and final implementation is contingent upon review and approval by the Transboundary Panel of the U.S./Canada Pacific Salmon Commission and approval by the Pacific Salmon Commission.

The Board adopted a proposal to close Federal public waters to non-Federally qualified users in the Makhnati Island area to the harvest of herring and herring spawn. This closure was enacted for potential conservation concerns and to protect subsistence uses. This action varied from the Council recommendation, yet met its intent.

These final regulations reflect Board review and consideration of Regional Council recommendations and public and Tribal comments. Because this rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act Compliance

The Board has provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements, including publishing a proposed rule in the **Federal Register**, participation in multiple Regional Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Board's decision on any particular proposal for regulatory change (36 CFR 242.20 and 50 CFR 100.20). Therefore, the Board believes that sufficient public notice and opportunity for involvement have been given to affected persons regarding Board decisions.

In the more than 25 years that the Program has been operating, no benefit to the public has been demonstrated by delaying the effective date of the subsistence regulations. A lapse in regulatory control could affect the continued viability of fish or wildlife populations and future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(d)(3) to make this rule effective upon the date set forth in **DATES** to ensure continued operation of the subsistence program.

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

The following **Federal Register** documents pertain to this rulemaking:

SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A, B, AND C: FEDERAL REGISTER DOCUMENTS PERTAINING TO THE FINAL RULE

Federal Register citation	Date of publication	Category	Details
57 FR 22940	May 29, 1992	Final Rule	''Subsistence Management Regulations for Public Lands in Alaska; Final Rule'' was published in the **Federal Register**.
64 FR 1276	January 8, 1999	Final Rule	Amended the regulations to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. Extended the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or to an Alaska Native Corporation. Specified and clarified the Secretaries' authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority.
66 FR 31533	June 12, 2001	Interim Rule	Expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings.
67 FR 30559	May 7, 2002	Final Rule	Amended the operating regulations in response to comments on the June 12, 2001, interim rule. Also corrected some inadvertent errors and oversights of previous rules.
68 FR 7703	February 18, 2003	Direct Final Rule	Clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Councils must have an odd number of members.
68 FR 23035	April 30, 2003	Affirmation of Direct Final Rule.	Because no adverse comments were received on the direct final rule (67 FR 30559), the direct final rule was adopted.
69 FR 60957	October 14, 2004	Final Rule	Clarified the membership qualifications for Regional Advisory Council membership and relocated the definition of ''regulatory year'' from subpart A to subpart D of the regulations.
70 FR 76400	December 27, 2005	Final Rule	Revised jurisdiction in marine waters and clarified jurisdiction relative to military lands.
71 FR 49997	August 24, 2006	Final Rule	Revised the jurisdiction of the subsistence program by adding submerged lands and waters in the area of Makhnati Island, near Sitka, AK. This allowed subsistence users to harvest marine resources in this area under seasons, harvest limits, and methods specified in the regulations.
72 FR 25688	May 7, 2007	Final Rule	Revised nonrural determinations.
75 FR 63088	October 14, 2010	Final Rule	Amended the regulations for accepting and addressing special action requests and the role of the Regional Advisory Councils in the process.
76 FR 56109	September 12, 2011	Final Rule	Revised the composition of the Federal Subsistence Board by expanding the Board by two public members who possess personal knowledge of and direct experience with subsistence uses in rural Alaska.
77 FR 12477	March 1, 2012	Final Rule	Extended the compliance date for the final rule (72 FR 25688) that revised nonrural determinations until the Secretarial program review is complete or in 5 years, whichever comes first.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule does not contain any new collections of

information that require OMB approval. OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100, and assigned OMB Control Number 1018–0075, which expires February 29, 2016.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value Statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this Program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act, Title VIII, does not provide specific rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Board provided Federally recognized Tribes and Alaska Native corporations opportunities to consult on this rule. Consultation with Alaska Native corporations are based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.''

The Secretaries, through the Board, provided a variety of opportunities for consultation: Commenting on proposed changes to the existing rule; engaging in dialogue at the Regional council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

On January 21, 2015, the Board provided Federally recognized Tribes and Alaska Native Corporations a specific opportunity to consult on this rule prior to the start of its public regulatory meeting. Federally recognized Tribes and Alaska Native Corporations were notified by mail and telephone and were given the opportunity to attend in person or via teleconference.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Eugene R. Peltola, Jr. of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Mary McBurney, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Trevor T. Fox, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Thomas Whitford, Alaska Regional Office, U.S. Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National

forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, the Federal Subsistence Board amends title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART ____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart D—Subsistence Taking of Fish and Wildlife

■ 2. Amend § ____.25(a) by adding a definition for ''Hook'' in alphabetical order to read as follows:

§ ____.25 Subsistence taking of fish, wildlife, and shellfish: general regulations.

(a) * * *

Hook means a single shanked fishhook with a single eye constructed with one or more points with or without barbs. A hook without a ''barb'' means the hook is manufactured without a barb or the barb has been completely removed or compressed so that barb is in complete contact with the shaft of the hook.

* * * * *

■ 3. Amend § ____.27 by:

■ a. Revising paragraphs (e)(4)(ix) and (e)(13)(xiii)(E); and

■ b. Adding paragraphs (e)(10)(iv)(I) and (J) and (e)(13)(xx) and (xxi), to read as follows:

§ ____.27 Subsistence taking of fish.

* * * * *

(e) * * *

(4) * * *

(ix) You may only take salmon by gillnet, beach seine, fish wheel, dipnet, or rod and reel subject to the restrictions set out in this section, except that you may also take salmon by spear in the Kanektok, and Arolik River drainages, and in the drainage of Goodnews Bay.

* * * * *

(10) * * *

(iv) * * *

(I) Residents of Ninilchik may harvest Sockeye, Chinook, Coho, and Pink salmon through an experimental community gillnet fishery in the Federal public waters of the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to the Tustumena Lake boat launch July 1–31. The experimental community gillnet fishery will expire 5 years after approval of the first operational plan.

(1) Only one community gillnet can be operated on the Kasilof River. The gillnet cannot be over 10 fathoms in length, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.

(2) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, based on the merits of the operational plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its use in consultation with the Federal fishery manager. The experimental community gillnet will be subject to compliance with Kenai National Wildlife Refuge regulations and restrictions.

(i) Prior to the season, provide a written operational plan to the Federal fishery manager including a description of fishing method, mesh size requirements, fishing time and location, and how fish will be offered and distributed among households and residents of Ninilchik;

(ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation, and number of each species caught and retained or released.

(3) The gillnet owner (organization) may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:

(i) Identifies a person who will be responsible for fishing the gillnet;

(ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.

(4) Fishing for Sockeye, Chinook, Coho and Pink salmon will be closed by Federal Special Action prior to the operational plan end dates if the annual total harvest limits for any salmon species is reached or suspended.

(5) Salmon taken in the gillnet fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kasilof River. All fish harvested must be reported to the in-season manager within 72 hours of leaving the fishing location.

(i) A portion of the total annual harvest limits for the Kasilof River will be allocated to the experimental community gillnet fishery.

(ii) The gillnet fishery will be closed once the allocation limit is reached.

(6) Salmon taken in the experimental community gillnet fishery will be included as part of the dip net/rod and reel fishery annual household limits for the Kasilof River.

(7) Residents of Ninilchik may retain other species incidentally caught in the Kasilof River. When the retention of rainbow/steelhead trout has been restricted under Federal subsistence regulations, the gillnet fishery will be closed.

(8) Before leaving the site, all harvested fish must be marked by removing their dorsal fin, and all retained fish must be recorded on the fishing permit.

(9) Failure to respond to reporting requirements or return the completed harvest permit by the due date listed on the permit may result in issuance of a violation notice and will make you ineligible to receive a subsistence permit during the following regulatory year.

(J) Residents of Ninilchik may harvest Sockeye, Chinook, Coho, and Pink salmon with a gillnet in the Federal public waters of the Kenai River. Residents of Ninilchik may retain other species incidentally caught in the Kenai River except for Rainbow trout and Dolly Varden 18 inches or longer. Rainbow trout and Dolly Varden 18 inches or greater must be released.

(1) Only one community gillnet can be operated on the Kenai River. The gillnet cannot be over 10 fathoms in length to take salmon, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.

(2) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, based on the merits of the operational plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its use and removal in consultation with the Federal fishery manager. As part of the permit, the organization must:

(i) Prior to the season, provide a written operational plan to the Federal fishery manager including a description of how fishing time and fish will be offered and distributed among households and residents of Ninilchik;

(ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation, and number of each species caught and retained or released.

(3) The gillnet owner (organization) may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:

(i) Identifies a person who will be responsible for fishing the gillnet;

(ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.

(4) Fishing will be allowed from June 15 through August 15 on the Kenai River unless closed or otherwise restricted by Federal special action.

(5) Salmon taken in the gillnet fishery will be included as part of the dip net/rod and reel fishery annual total harvest limits for the Kenai River and as part of dip net/rod and reel household annual limits of participating households.

(6) Fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

* * * * *

(13) * * *

(xiii) * * *

(E) Fishing nets must be checked at least twice each day. The total annual guideline harvest level for the Stikine River fishery is 125 Chinook, 600 Sockeye, and 400 Coho salmon. All salmon harvested, including incidentally taken salmon, will count against the guideline for that species.

* * * * *

(xx) The Klawock River drainage is closed to the use of seines and gillnets during July and August.

(xxi) The Federal public waters in the Makhnati Island area, as defined in § ____.3(b)(5) are closed to the harvest of herring and herring spawn except by Federally qualified users.

Dated: April 29, 2015.

Eugene R. Peltola, Jr.,

Assistant Regional Director, U.S. Fish and Wildlife Service, Acting Chair, Federal Subsistence Board.

Dated: April 29, 2015.

Thomas Whitford,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 2015–11907 Filed 5–15–15; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2015–0227; FRL–9927–68–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Utah County—Trading of Motor Vehicle Emission Budgets for PM_{10} Transportation Conformity

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the State of Utah. On March 9, 2015, the Governor of Utah submitted a revision to the Utah SIP, adding a new rule regarding trading of motor vehicle emission budgets (MVEB) for Utah County. The rule allows trading from the motor vehicle emissions budget for primary particulate matter of 10 microns or less in diameter (PM_{10}) to the motor vehicle emissions budget for nitrogen oxides (NO_X), which is a PM_{10} precursor. The resulting motor vehicle emissions budgets for NO_X and PM_{10} may then be used to demonstrate transportation conformity with the SIP. The EPA is taking this action under section 110 of the Clean Air Act (CAA).

DATES: This rule is effective on July 17, 2015 without further notice, unless EPA receives adverse comment by June 17, 2015. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2015–0227, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: russ.tim@epa.gov*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2015–0227. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through h*ttp://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I, General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket

Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6479, *russ.tim@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information

1. *Submitting CBI.* Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Background

In this action, we are approving and soliciting public comment regarding the Governor's March 9, 2015, submittal of Utah's new Rule R307–311 for adoption into the Utah SIP. The rule will allow certain trading of MVEBs for the purposes of transportation conformity for PM_{10} for Utah County. Once approved by EPA, the Mountainland Association of Governments (MAG) will then be able to use the provisions of Rule R307–311 when MAG performs a transportation conformity determination for its Regional Transportation Plan (RTP) and/or Transportation Improvement Program (TIP).

The above SIP action that was adopted by the Utah Air Quality Board (UAQB), and subsequently submitted to EPA by the Governor of Utah for approval, is discussed in greater detail in sections III, IV, and V below. We also discuss the state's associated technical support document (TSD), which gives technical information to support new Rule R307–311.

III. What was the State's process?

Sections 110(a)(2) and 110(l) of the CAA requires that a state provide reasonable notice and public hearing before adopting a SIP revision and submitting it to us. More detailed requirements for notice and public hearing are set out in 40 CFR 51.102.

On December 4, 2014 the UAQB proposed for public comment amendments to the Utah SIP for Utah Air Quality Rule R307–311; ''Utah County: Trading of Emission Budgets for Transportation Conformity.'' In addition on January 12, 2015, the Utah Division of Air Quality (UDAQ) made the proposed TSD available for public comment and extended the Rule R307–311 public comment period to February 12, 2015. EPA notes that included with the state's administrative documentation for this SIP and Rule revision was a letter memorandum, DAQ–010–15 dated February 19, 2015, from Bryce Bird, Director, UDAQ to the UAQB. This letter memorandum indicated that a public comment period was held from January 1, 2015 through February 12, 2015 regarding the proposed Rule R307–311 SIP revisions. The UDAQ February 19, 2015 letter memorandum noted that no public comments were received on the proposed rule R307–311, but that EPA did comment on the TSD. UDAQ summarized and responded to EPA's comments in its February 19, 2015 letter memorandum to the UAQB. In addition, UDAQ noted that no public hearings were requested. In consideration of the February 19, 2015 UDAQ letter memorandum, the UAQB subsequently adopted the proposed Rule R307–311, and a revised TSD, on March 4, 2015. The SIP Rule revision became state effective on March 5, 2015 and was submitted by the Governor to EPA by a letter dated March 9, 2015. By a subsequent letter dated March 11, 2015, Bryce Bird, Director, UDAQ submitted the necessary administrative documentation that supported the Governor's submittal.

We have evaluated Utah's March 9, 2015 SIP submittal and the March 11, 2015 submitted administrative documentation and have determined that the state met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By a letter dated March 24, 2015, we advised the state that the SIP submittal was complete under section 110(k)(1)(B) of the Act, because the submittal met the minimum ''completeness'' criteria found in 40 CFR part 51, Appendix V.

IV. EPA's Evaluation of Utah Rule R307–311

(a) Background and Purpose

Transportation conformity is required by section 176 of the CAA to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of a SIP. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards (NAAQS). EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the state air quality plan.

One key provision of EPA's transportation conformity rule (see 40 CFR part 93, subpart A) requires a demonstration that emissions from the RTP and TIP are consistent with the MVEB in the applicable SIP (40 CFR 93.118 and 93.124). The transportation conformity MVEB is defined as the level of on-road mobile source emissions relied upon in the SIP to attain or maintain compliance with the NAAQS in the nonattainment or maintenance area.

In this particular instance, the NAAQS involved is PM_{10}, the nonattainment area is Utah County, the

MVEBs involve direct emissions of PM_{10} and NO_X, the latter as a precursor to the formation of PM_{10}, and the applicable SIP is the EPA-approved Utah PM_{10} attainment plan, as updated on December 23, 2002 (67 FR 78181). The approved PM_{10} attainment plan contains (among other things) an attainment demonstration for Utah County that sets PM_{10} and NO_X MVEBs.

Transportation conformity is demonstrated when future year's projected on-road mobile source's emissions, for a particular pollutant or precursor, are estimated to be at or below the on-road motor vehicle's emissions budget for that pollutant or precursor in the applicable SIP. For the PM_{10} NAAQS for Utah County, conformity must be demonstrated separately for the PM_{10} and NO_X MVEBs established in the Utah County PM_{10} attainment demonstration. However, emissions can be traded between the PM_{10} and NO_X budgets if there is an approved rule in the SIP that establishes appropriate mechanisms for such trades. See 40 CFR 93.124(b).

Currently, the Utah SIP does not contain an approved rule that establishes an appropriate mechanism for trading of emissions between the PM_{10} and NO_X MVEBs for Utah County. The EPA notes, however, that we previously approved a Utah Rule (R307–310) that allows trading of emissions between the PM_{10} and NO_X MVEBs for another PM_{10} nonattainment area in Utah, Salt Lake County. 67 FR 44065 (July 1, 2002). For Utah County, the state has developed a new Rule R307–311, very similar to that for Salt Lake County, which establishes an on-road mobile source emissions trading mechanism that; (1) involves only PM_{10} and NO_X MVEBs from the PM_{10} attainment demonstration SIP, (2) allows trading in only one direction from the PM_{10} budget to the NO_X budget on a one-to-one basis, (3) applies only to transportation conformity determinations in Utah County in conjunction with the PM_{10} attainment demonstration SIP, and (4) is pursuant to 40 CFR part 93, subpart A.

(b) Utah Rule R307–311 Description

An overview of all portions of the state's new Rule R307–311 is provided below:

1. R307–311 is entitled ''Utah County: Trading of Emission Budgets for Transportation Conformity.''

2. R307–311–1 ''Purpose.'' The stated purpose of this new rule is:

This rule establishes the procedures that may be used to trade a portion of the primary PM_{10} budget when demonstrating that a transportation plan, transportation improvement program, or project conforms with the motor vehicle emissions budgets in the Utah County portion of Section IX, Part A of the State Implementation Plan, ''Fine Particulate Matter (PM_{10}).

3. R307–311–2. ''Definitions.'' This section provides applicable definitions:

The definitions contained in 40 CFR 93.101, effective as of the date referenced in R307–101–3,[1] are incorporated into this rule by reference. The following additional definitions apply to this rule.

''Budget'' means the motor vehicle emission projections used in the attainment demonstration in the Utah County portion of Section IX, Part A of the State Implementation Plan, ''Fine Particulate Matter (PM_{10}).

''NO_X'' means oxides of nitrogen.

''Primary PM_{10}'' means PM_{10} that is emitted directly by a source. Primary PM_{10} does not include particulate matter that is formed when gaseous emissions undergo chemical reactions in the ambient air.

''Transportation Conformity'' means a demonstration that a transportation plan, transportation improvement program, or project conforms with the emissions budgets in a state implementation plan, as outlined in 40 CFR, Chapter 1, Part 93; [2] Determining Conformity of Federal Actions to State or Federal Implementation Plans.

4. R307–311–3. ''Applicability''. This portion of the rule defines its applicability. EPA notes that this rule may only be applied to Utah County and only for PM_{10}:

(A) This rule applies to agencies responsible for demonstrating transportation conformity with the Utah County portion of Section IX, Part A of the State Implementation Plan, ''Fine Particulate Matter (PM_{10}).

(B) This rule does not apply to emission budgets from Section IX, Part C.6 of the State Implementation Plan, ''Carbon Monoxide Maintenance Provisions.

5. R307–311–4. ''Trading Between Emission Budgets.'' This portion of the rule specifies the trading mechanism and provides the trading ratio of NO_X and PM_{10}. In our section V below, EPA evaluates the technical justification provided in the TSD for the trading ratio. In this section, we find that the rule language establishes an appropriate trading mechanism for the Utah County NO_X and PM_{10} motor vehicle emission budgets:

The agencies responsible for demonstrating transportation conformity are authorized to supplement the budget for NO_X with a portion of the budget for primary PM_{10} for the purpose of demonstrating transportation conformity for NO_X. The NO_X budget shall be supplemented using the following procedures.

(a) The metropolitan planning organization shall include the following information in the transportation conformity demonstration:

(i) The budget for primary PM_{10} and NO_X for each required year of the conformity demonstration, before trading allowed by this rule has been applied;

(ii) The portion of the primary PM_{10} budget that will be used to supplement the NO_X budget, specified in tons per day using a 1:1 ratio of primary PM_{10} to NO_X, for each required year of the conformity demonstration;

(iii) The remainder of the primary PM_{10} budget that will be used in the conformity demonstration for primary PM_{10}, specified in tons per day for each required year of the conformity demonstration; and

(iv) The budget for primary PM_{10} and NO_X for each required year of the conformity demonstration after the trading allowed by this rule has been applied.

(b) Transportation conformity for NO_X shall be demonstrated using the NO_X budget supplemented by a portion of the primary PM_{10} budget as described in (a)(ii). Transportation conformity for primary PM_{10} shall be demonstrated using the remainder of the primary PM_{10} budget described in (a)(iii).

(c) The primary PM_{10} budget shall not be supplemented by using a portion of the NO_X budget.

V. EPA's Evaluation of the Technical Support Document for R307–311

The Governor's SIP revision submittal provided a TSD to support the new Rule R307–311 and address MVEB trading, as contemplated by 40 CFR 93.124(b), for PM_{10} and NO_X in Utah County.

a. Description

PM_{10} is particulate matter with diameters smaller than 10 micrometers. PM_{10} consists of solid and/or liquid particles of; (1) primary particles that are directly emitted particulate matter (PM) or PM that quickly condenses upon release, and (2) secondary particles which are PM that is formed in the atmosphere from gaseous

[1] R307–101–3 is approved into the Utah SIP and reflects a date of July 1, 2013 for incorporation by reference of federal rules.

[2] EPA notes this is applicable to projects not from a conforming RTP and TIP which must conform with the MVEBs. This clarification is only for those projects, and not projects from a conforming RTP and TIP. See 40 CFR 93.109(b) and 40 CFR 93.115(a).

precursors. Important gaseous precursors to PM include sulfur dioxide (SO_2) which converts to sulfate (SO_4) particles, NO_X which converts to nitrate (NO_3) particles, volatile organic compounds (VOCs) some of which convert to secondary organic aerosols, and ammonia (NH_3) which adds to the mass of sulfate PM and allows nitric acid to convert to PM_{10} in the form of ammonium nitrate.

Currently in Utah County, the RTP and TIP must demonstrate conformity to the MVEBs for PM_{10} and NO_X that were derived from the 2002 EPA-approved PM_{10} attainment demonstration SIP (see 67 FR 78181, December 23, 2002). Since the regulatory goal is to achieve and maintain attainment of the NAAQS and conformity related to total PM_{10}, not individual components, it should not matter in the conformity analysis whether PM_{10} consists of directly emitted (primary) PM_{10} or secondary nitrate PM_{10} formed in the atmosphere from precursor NO_X gas emissions, provided the MVEBs for PM_{10} and NO_X are consistent with the SIP's demonstration of attainment. The state's TSD outlines the scientific rationale for why excess NO_X motor vehicle emissions (above the NO_X MVEB level) can be offset, on a 1 to 1 basis, with available motor vehicle PM_{10} emissions (below the PM_{10} MVEB level). The State's TSD explains why the provisions of Rule R307–311 are considered conservative (*i.e.,* protective of the environment) in that the Rule only allows a one-way direction trading of the MVEBs and a trading ratio of only 1 to 1.

b. What fraction of the NO_X emissions in Utah County convert to PM_{10}?

The state's TSD describes how each ton of gaseous NO_X that gets converted to PM_{10} creates more than a ton of PM_{10} because the molecular weight of ammonium nitrate PM_{10} is greater than the molecular weight of NO_X gaseous emissions. Considering the ratio of the molecular weights of the NO_X precursor gas and the resulting ammonium nitrate aerosol (PM_{10}), the state notes that a ton of NO_X that is converted from a gas to a particle can form as much as 1.74 tons of PM_{10}.

However, not all NO_X emissions are converted because it takes time to convert NO_X to nitric acid (HNO_3), which is the necessary gaseous precursor to ammonium nitrate PM_{10}. These reactions generally occur at rates of 1 to 10 percent per hour. It would take approximately at least 10 hours to fully convert to nitric acid. After this initial conversion, only a fraction of the gaseous nitric acid will condense as ammonium nitrate PM_{10}, depending on equilibrium considerations. Finally, during the gas-to-particle conversion process, deposition will remove a significant amount of material. Throughout this process of NO_X conversion to nitric acid, and then to PM_{10} and deposition, an equivalent amount of directly emitted PM_{10} is having a much larger effect on the PM_{10} concentration. Directly emitted PM_{10} has an effect on the ambient concentration immediately upon its release, while NO_X emissions require hours to have an effect.

From a historical perspective, the conversion of NO_X to PM_{10} has been discussed at EPA since at least 1996. In our 1996 proposed rule to revise the regulations for the Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs, we discussed a proposed approach for interpollutant trading for PM_{10} offsets in the nonattainment NSR program:

> The conversion process may depend on several variables, including the availability of chemical reactants in the atmosphere for the conversion process, and the difference in mass between the PM_{10} precursor molecule and the PM_{10} particle that the precursor reacts to become. Another concern is that the rate of conversion of the precursor to PM_{10} may be so long that the precursor may not entirely convert to PM_{10} within the same nonattainment area. Thus, there would be less counteracting effect and no net improvement to air quality in the area. Under the EPA's proposal, a source of a PM_{10} precursor may offset its increased emissions with the same precursor type or PM_{10} (or a combination of the two). In this situation, a net improvement in air quality would be assured. At this point, however, the EPA is not proposing to allow offsetting among different types of PM_{10} precursors, or offsetting PM_{10} increases with reduction in PM_{10} precursors, because the Agency does not now have a scientific basis to propose conversion factors. (61 FR 38305, July 23, 1996).

These statements were cited in our 2002 proposed approval of the MVEB trading rule (R307–310) for Salt Lake County. 67 FR 21609 (May 1, 2002).

However, EPA has more recently issued guidance on interpollutant trading provisions for fine particulate matter ($PM_{2.5}$) for offsets under the nonattainment NSR program. The guidance memorandum is entitled ''Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles ($PM_{2.5}$)'' and is dated July 21, 2011 (hereafter referred to as ''Revised 2011 Trading Policy''). The Revised 2011 Trading Policy states in part (page 3, fourth paragraph) that ''. . . states will be expected to develop separate $PM_{2.5}$ precursor offset ratios that are demonstrated to be suitable for addressing the particular precursor's relationship with ambient $PM_{2.5}$ concentrations for 24-hour averaging periods that are causing violations in that nonattainment area.'' And on page 4, first paragraph; ''. . . each ratio will need to be supported by modeling or other technical demonstration to show that such ratio is suitable for the particular $PM_{2.5}$ nonattainment area of concern . . .''

Our Revised 2011 Trading Policy provides a general framework for such efforts, involving the following steps:

1. Definition of the appropriate geographical area.
2. Sensitivity runs with appropriate air quality models.
3. Calculation of interpollutant ratios.
4. Quality assurance of the results.

To support Utah's rule R307–311, the UDAQ applied the above methodology to the Utah County 24-hour PM_{10} NAAQS nonattainment area. Although the Revised 2011 Trading Policy is specific to $PM_{2.5}$ and nonattainment NSR offsets, and is nonbinding guidance, in this action we consider that the recommendations in the Revised 2011 Trading Policy provide a suitable approach for a technical demonstration that the trading ratio for Utah County for the PM_{10} and NO_X MVEBs is appropriate under 40 CFR 93.124(b).

The UDAQ states in the TSD that exceedances of the PM_{10} 24-hour NAAQS in Utah County are characterized by spikes in secondary aerosol formation under conditions of wintertime temperature inversions which prevent good atmospheric mixing and facilitate conversion of secondary PM_{10}. The UDAQ also states that a high percentage of the PM_{10} monitored in Utah County, during winter episodes of elevated concentration, lies also within the $PM_{2.5}$ fraction. EPA also notes that the 2002 Utah County PM_{10} SIP revision identified both NO_X and SO_2 as precursors to the formation of PM_{10}.

The TSD for Rule R307–311 identifies that parts of Utah County (the valley regions, western area of the County) are also designated as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS (74 FR 58688, November 13, 2009). To meet the requirements set out in subparts 1 and 4 of Part D, title I of the CAA, the UDAQ developed a moderate area attainment plan for Utah County that (among other things) contained a demonstration that attainment of the 24-hour $PM_{2.5}$ standards by the applicable attainment date for moderate areas, December 31, 2015, is impracticable (hereafter ''$PM_{2.5}$ Impracticability Demonstration''). This

attainment plan was submitted by the Governor to EPA on December 16, 2014. The air quality modeling for the $PM_{2.5}$ Impracticability Demonstration was conducted by UDAQ using the Community Multi-Scale Air Quality model (CMAQ). CMAQ is also capable of determining the relative importance of NO_X and PM_{10} in contributing to PM_{10} nonattainment.

The emission inventories that were developed by UDAQ for the Utah County $PM_{2.5}$ Impracticability Demonstration included $PM_{2.5}$, SO_2, NO_X, VOC, Ammonia and PM_{10}.[3] As PM_{10} was inventoried for the $PM_{2.5}$ Impracticability Demonstration, this allowed CMAQ model sensitivity runs to be made for the purpose of evaluating and supporting the MVEB trading provisions in Rule R307–311. The UDAQ's methodology employed the CMAQ model, as developed for Utah County, with a substitution of PM_{10} emissions for $PM_{2.5}$. The UDAQ also notes in the Rule R307–311 TSD that the CMAQ model was re-validated with respect to PM_{10} emissions data from the appropriate episode period prior to making the sensitivity runs (refer to Appendix A of the TSD).

Having made these adjustments to the CMAQ model, UDAQ ran the model to generate a time-series plot (refer to Appendix A of the TSD). The UDAQ determined that the ratio of NO_X to PM_{10} equivalence was 5.702 to one. Since this ratio is considerably greater than 1:1, the UDAQ concluded that reducing primary PM_{10} is more beneficial than reducing NO_X for improving Utah County's air quality with respect to PM_{10}. The EPA has evaluated this additional sensitivity modeling information and has concluded that it provides an adequate technical demonstration to support the MVEB trading provisions in Rule R307–311. Based on the demonstration, we also conclude that Rule R307–311 establishes an appropriate trading ratio, and that under Rule R307–311, there will not be adverse impacts to the overall ambient 24-hour PM_{10} concentrations within Utah County.

With regard to ambient 24-hour PM_{10} concentrations within Utah County, we have also evaluated the current (state-certified) 2011 through 2013 PM_{10} ambient air quality monitoring data for Utah County in EPA's Air Quality System (AQS), EPA's repository for the Nation's ambient air quality data. EPA's guidance for the calculation of 24-hour PM_{10} design value concentrations provide four techniques.[4] Our guidance's ''Table Lookup'' method shows a 2011 through 2013 PM_{10} design value concentration as 149μm^3 at the North Provo monitor and 124μm^3 at the Lindon monitor. These values, however, contain certain data quality issues such as missing days of monitoring data and zero reading days. We believe that if the statistical method from our guidance, ''Using the empirical frequency distribution of several years of the data (graphical estimation),'' is used, in this particular case it provides a more accurate representation of the monitoring data.[5] When using this statistical/graphic approach, the North Provo monitor then has a 2011 through 2013 PM_{10} design value concentration of 133.5 μm^3 and the Lindon monitor has a 2011 through 2013 design value concentration of 118.7 μm^3. However, EPA notes that regardless of the methodology used, Utah County continues to demonstrate attainment of the 24-hour PM_{10} NAAQS.

c. Impact of the PM_{10} and NO_X MVEB Trading Rule on Other Pollutants; EPA's Evaluation of Utah's Information Regarding the Provisions of Section 110(1) of the Clean Air Act

Section 110(1) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. EPA's evaluation above shows that this SIP revision will not interfere with attainment of the PM_{10} NAAQS.

In addition to being a designated nonattainment area for PM_{10}, Utah County is also designated as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS. The city of Provo, in Utah County, is designated as an attainment/maintenance area for carbon monoxide (CO). These criteria pollutants, along with the 2008 8-hour ozone NAAQS and the 1-hour nitrogen dioxide (NO_2) NAAQS, were evaluated by the state in the TSD for potential collateral impacts from the implementation of the provisions of Rule R307–311.

1. $PM_{2.5}$

As discussed above, part of Utah County (the western portion) was designated by EPA as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS (74 FR 58688, November 13, 2009), and on December 16, 2014, the state submitted an attainment plan containing, among other things, the $PM_{2.5}$ Impracticability Demonstration. As with PM_{10} (described above), UDAQ performed sensitivity runs using the CMAQ modeling information that was developed for the $PM_{2.5}$ Impracticability Demonstration. This modeling exercise was performed in order to determine an equivalence ratio between NO_X and $PM_{2.5}$. The resulting ratio of NO_X to $PM_{2.5}$ was determined by the UDAQ to be 13.09 to 1.0. Similar to the result for PM_{10}, the ratio is greater than one to one, and illustrates that reducing primary $PM_{2.5}$ is more beneficial than reducing the same quantity of NO_X.

However, Rule R307–311 provides for reductions in PM_{10}, and generally speaking, a reduction in PM_{10} is not necessarily a reduction in $PM_{2.5}$. So that the above $PM_{2.5}$ to NO_X ratio could support a determination that Rule R307–311 would not have an adverse impact on overall $PM_{2.5}$ concentrations in Utah County, the UDAQ considered the physical make-up of PM_{10} emissions from on-road mobile sources in Utah County. The following table, presenting information from the TSD, considers PM emissions as they were inventoried for calendar year 2015 in the $PM_{2.5}$ Impracticability Demonstration for the Utah County $PM_{2.5}$ nonattainment area:

TABLE 1—UTAH COUNTY; ON-ROAD MOBILE SOURCE EMISSIONS

[In tons per day in 2015]

	PM_{10}	$PM_{2.5}$	$\%PM_{2.5}$
Road Dust	3.95	0.99	25.1

[3] We are not acting today on any portion of the state's December 16, 2014 submittal, including the $PM_{2.5}$ Impracticability Demonstration and the emission inventories.

[4] *PM_{10} SIP Development Guideline*, EPA–450/2–86–001, June 1987, section 6.3; pages 6–3 through 6–8. The cited portions of this guidance are available in the docket for this action; the entire document is available online at *http://www.epa.gov/ttn/caaa/t1/memoranda/pm10sip_dev_guide.pdf.*

[5] Memorandum to File entitled ''Utah PM_{10} 24-hour Design Concentrations,'' Richard M. Payton, USEPA Region 8, dated April 22, 2015.

TABLE 1—UTAH COUNTY; ON-ROAD MOBILE SOURCE EMISSIONS—Continued

[In tons per day in 2015]

	PM_{10}	$PM_{2.5}$	$\%PM_{2.5}$
Direct PM	1.84	1.38	75.0
Total	5.79	2.37	40.9

As derived from the state's information and as presented in Table 1 above, for every ton of PM_{10} emissions due to on-road mobile sources, 0.409 tons would be composed of $PM_{2.5}$. The provisions of Rule R307–311 would allow a one-ton increase in NO_X emissions that would be offset by a one-ton decrease in the PM_{10} emissions. Based on the information in the above table, the state concluded that a one-ton increase in NO_X emissions would be offset by a 0.409-ton decrease in $PM_{2.5}$ emissions. To illustrate, using the 1:0.409 ratio and the equivalence ratio of 13.09:1 for NO_X to $PM_{2.5}$, a 13 ton increase in NO_X emissions would equal a 1 ton increase of $PM_{2.5}$ emissions. However, applying the 1 to 1 trading ratio with PM_{10} would then require a 13 ton PM_{10} emissions decrease which is a 5.3 ton (13 x 0.409) $PM_{2.5}$ emissions decrease. This example results in a net 4.3 ton decrease in $PM_{2.5}$ emissions.

Based on this 1:0.409 ratio and the equivalence ratio of 13.09:1 for NO_X to $PM_{2.5}$, the EPA can, therefore, agree with the state and conclude that Rule R307–311, with its requirements to allow the trading of the PM_{10} budget to the NO_X budget in one direction only at a ratio of 1:1, would not have an adverse impact on overall ambient 24-hour $PM_{2.5}$ concentrations within Utah County.

The EPA notes that additional supporting information was provided in the $PM_{2.5}$ Impracticability Demonstration as it included an emission inventory of NO_X emissions for calendar year 2015. The $PM_{2.5}$ Impracticability Demonstration notes that on-road mobile sources in Utah County are expected to account for 21.48 tons per winter weekday in 2015. The on-road mobile sources emissions were calculated using EPA's Motor Vehicle Emission Simulator (MOVES) model and the MOVES2010a version. This estimate is greater than the combined sum of the 2020 MVEBs for both PM_{10} and NO_X contained in the EPA-approved 2002 SIP revision. To demonstrate, even if the entire PM_{10} MVEB was traded to increase the NO_X MVEB as a result of the application of Rule R307–311, the resulting total NO_X emissions would still be less than the 2015 estimated NO_X emissions contained in the $PM_{2.5}$ Impracticability Demonstration.

2. Carbon Monoxide (CO)

As noted previously, the Provo-Orem area is a CO attainment/maintenance area (70 FR 66264, November 2, 2005). EPA notes that NO_X emissions do not act as a precursor to carbon monoxide; therefore, EPA has concluded that the application of the provisions of R307–311 will not impact the Provo-Orem CO maintenance plan or attainment of the CO NAAQS. The state notes in the Rule R307–311 TSD that CO maintenance plan has its own CO MVEB which has been set at a level demonstrated to keep the Provo-Orem area in attainment with the CO standard. The provisions of Rule R307–311 do not change the maintenance plan's CO MVEB.

For purposes of completeness, the state provided recent CO ambient air quality monitoring data in the Rule R307–311 TSD. These data have been excerpted by EPA and are provided in the table below:

TABLE 2—CO 1-HOUR AND CO 8-HOUR DESIGN VALUES

Year	*Annual* CO NAAQS (1-hour, 35 ppm)	*8-hour* CO NAAQS (9 ppm)
Monitor location:	North Provo:	North Provo:
2011	3.2 ppm	2.1 ppm
2012	2.8 ppm	1.9 ppm
2013	2.9 ppm	2.0 ppm
Preliminary 2014	2.8 ppm	1.9 ppm

As can be seen in Table 2 above, the Provo area continues to demonstrate compliance with both the CO Annual and CO 8-hour NAAQS.

3. Ozone

The EPA notes that NO_X emissions are a precursor to the formation of ground level ozone, $PM_{2.5}$, and PM_{10}. With regard to ozone, we also note that Utah County has never been designated as nonattainment for any applicable ozone NAAQS. The current, applicable ozone NAAQS is the 2008 8-hour ozone NAAQS and Utah County was designated by EPA as unclassifiable/attainment for that NAAQS (77 FR 30088, May 21, 2012). Thus, the state has not had to develop an ozone attainment plan or maintenance plan for Utah County.

To assess the potential impacts to Utah County's continued attainment of the 2008 8-hour ozone NAAQS, EPA considered ozone ambient air quality monitoring data for Utah County and predicted future-year NO_X emission reductions from motor vehicles.

The state provided recent ozone air quality monitoring data in the Rule R307–311 TSD. EPA has excerpted that information from the TSD and presents those data in Table 3 below:

TABLE 3—8-HOUR OZONE DESIGN VALUES (DV)

Year	Monitor location	8-hour ozone DV (NAAQS = 75 ppb)	Monitor location	8-hour ozone DV (NAAQS = 75 ppb)
2011	North Provo	67.7 ppb	Spanish Fork	68.0 ppb
2012	North Provo	70.7 ppb	Spanish Fork	70.3 ppb
2013	North Provo	73.0 ppb	Spanish Fork	70.3 ppb
2014 (Preliminary)	North Provo	73.0 ppb	Spanish Fork	71.7 ppb

As can be seen in Table 3 above, Utah County continues to demonstrate compliance with 2008 8-hour ozone NAAQS.

The provisions of Rule R307–311 would allow for an increase in the Utah County PM_{10} SIP's NO_X MVEB. However, EPA believes that regardless of this potential increase in the NO_X MVEB, overall future NO_X emissions from mobile sources will significantly decrease not only in Utah County, but in the nation as a whole. On April 28, 2014, we published a final rule adopting new Tier 3 emission standards and fuel requirements for motor vehicles and for motor vehicle fuels (79 FR 23414).

Our April 28, 2014 final rule included new Tier 3 emission standards to reduce exhaust and evaporative emissions from light-duty vehicles, light-duty trucks, and heavy-duty vehicles up to 14,000 pounds Gross Vehicle Weight Rating. In addition, the final rule specified corresponding changes to in-use fuel requirements. The motor vehicle tailpipe standards include different phase-in schedules that vary by vehicle class, but generally phase-in between model years 2017 to 2021 for light duty vehicles and up to 2025 for heavy duty vehicles. The vehicle emission standards combined with the reduction of gasoline sulfur content, which allows both current and new vehicle emission control systems to function at a higher pollutant removal efficiently, will significantly reduce motor vehicle emissions of NO_X, VOCs, direct $PM_{2.5}$, CO and air toxics. Compared to current vehicle and fuel standards, the non-methane organic gases (NMOG) and NO_X, presented as NMOG+NO_X, Tier 3 tailpipe standards for light-duty vehicles are estimated to show an approximately 80% reduction from today's fleet average. As both NO_X and VOCs contribute to the formation of ground level ozone and secondary $PM_{2.5}$, the EPA notes that these vehicle emission reductions will have a positive impact on all areas of the nation including Utah County. Additionally, we expect to see associated downward trends of CO, ozone, $PM_{2.5}$ and PM_{10} concentrations that will reflect the implementation of these fuel/vehicle emission improvements. Based on these expected reductions in motor vehicle emissions of NO_X, along with the monitoring data showing that Utah County is currently attaining the 2008 ozone NAAQS, we conclude that Rule R307–311 will not interfere with attainment of the ozone NAAQS.

4. NO_2

The EPA notes that NO_X emissions, which contain NO_2, are a precursor to the formation of ground level ozone, $PM_{2.5}$, and PM_{10}. We also note that Utah County was designated as unclassifiable/attainment for the new, more stringent, 2010 1-hour NO_2 NAAQS (77 FR 9532, February 17, 2012).

To assess the potential impacts to Utah County's continued attainment of the 2010 1-hour NO_2 NAAQS, as that version of the NO_2 NAAQS is more constraining, EPA considered NO_2 ambient air quality monitoring data for Utah County. The state provided recent NO_2 air quality monitoring data in the Rule R307–311 TSD. EPA has excerpted that information from the TSD and presents those data in Table 4 below:

TABLE 4—NO_2 1-HOUR DESIGN VALUES

Year	NO_2 NAAQS (DV 1-hour 100 ppb)
Monitor location:	North Provo:
2011	54.7 ppb
2012	58.0 ppb
2013	66.3 ppb
Preliminary 2014	68.3 ppb

As can be seen in Table 4 above, Utah County continues to demonstrate compliance with 2010 1-hour NO_2 NAAQS with values well below the level of the NAAQS. We, therefore, conclude that Rule R307–311 will not interfere with attainment of the 1-hour NO_2 NAAQS.

d. Conclusion

On the basis of the above EPA analyses, we have concluded that using a portion of the Utah County PM_{10} SIP's PM_{10} MVEB to offset or compensate for excess on-road mobile sources NO_X emissions, on a one-to-one basis and in one direction only, continues to demonstrate attainment of the PM_{10} NAAQS and is conservative and justifiable. In addition, based on the information in the Rule R307–311 TSD, and as supplemented by information prepared by EPA, we have concluded that with the implementation of the provisions in Rule R307–311 there will not be adverse effects to the CO, $PM_{2.5}$, 8-hour ozone, and NO_2 1-hour NAAQS. These statements are with respect to the implementation of the provisions of Rule R307–311 by MAG when MAG performs a transportation conformity determination for its RTP and/or TIP.

VI. Consideration of Section 110(l) of the Clean Air Act

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. In view of the state's rule language for its new Rule R307–311, our analyses presented above in section ''V. EPA's Evaluation of the Technical Support Document for R307–311'' with respect to PM_{10}, $PM_{2.5}$, ozone and NO_2, and the fact that NO_X has less impact on a per ton basis than primary PM_{10} emissions in Utah County, we have concluded there will be a net benefit on ambient air concentrations of PM_{10} when excess NO_X emissions are offset on a one to one basis. Therefore, implementation of the provisions of Rule R307–311 will allow the continued demonstration of attainment of the PM_{10} NAAQS in Utah County and is conservative and justifiable. We have also concluded there will be no adverse impact on any other NAAQS or applicable requirement of the CAA. Therefore, our approval of the State's Rule R307–311 is consistent with section 110(l) of the CAA.

VII. Final Action

The EPA is publishing this rule without prior proposal because the Agency views the Governor of Utah's March 9, 2015 submitted SIP revisions for Utah's Rule R307–311 and the Rule's associated TSD as a noncontroversial amendment and anticipates no adverse

comments. However, in the Proposed Rules section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective July 17, 2015 without further notice unless the Agency receives adverse comments by June 17, 2015. If the EPA receives adverse comments, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VIII. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Utah SIP materials and rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this rule's preamble for more information).

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *July 17, 2015.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: May 1, 2015.

Shaun L. McGrath,

Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52 [AMENDED]

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

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

Subpart TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(79) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(79) Revisions to the Utah State Implementation Plan involving Utah Rule R307–311; *Utah County: Trading of Emission Budgets for Transportation Conformity.* The Utah Air Quality Board adopted this SIP revision on March 4, 2015, it became state effective on March 5, 2015, and was submitted by the Governor to EPA by a letter dated March 9, 2015.

(*i*) Incorporation by reference.

(A) Utah Rules R307, *Environmental Quality, Air Quality,* R307–311, *Utah County: Trading of Emission Budgets for Transportation Conformity.* Effective March 5, 2015, as proposed in the Utah State Bulletin on January 1, 2015 and published on April 1, 2015 as effective.

[FR Doc. 2015–11784 Filed 5–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0963; FRL–9926–87]

Trichoderma asperelloides strain JM41R; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Trichoderma asperelloides* strain JM41R in or on all food commodities when used in accordance with label directions and good agricultural practices. BASF Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Trichoderma asperelloides* strain JM41R under FFDCA.

DATES: This regulation is effective May 18, 2015. Objections and requests for hearings must be received on or before July 17, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0963, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0963 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 17, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0963, by one of the following methods:

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

II. Background

In the **Federal Register** of February 21, 2014 (79 FR 9870) (FRL–9904–98), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 2F8102) by BASF Corporation, 26 Davis Dr., Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Trichoderma fertile* strain JM41R in or on all food commodities. That document referenced a summary of the petition prepared by the petitioner BASF Corporation, which is available in the docket via *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Subsequently, the petitioner provided additional data (*i.e.,* DNA sequence

work based on newly published taxonomies) on the identity of the pesticide to EPA. After reviewing these data, EPA concluded that the correct identity of the pesticide was *Trichoderma asperelloides* strain JM41R and not *Trichoderma fertile* strain JM41R. In order to give the public an opportunity to comment on this new information, EPA republished its receipt of this tolerance exemption petition filing with an updated and accurate description in the **Federal Register** of January 28, 2015 (80 FR 4525) (FRL–9921–55) and placed a revised petition from BASF Corporation into the docket. There were no comments received in response to the republished notice of filing.

III. Final Rule

A. EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption, and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.''

EPA evaluated the available toxicity and exposure data on *Trichoderma asperelloides* strain JM41R and considered its validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied and its risk assessment based on that data can be found within the April 20, 2015, document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for *Trichoderma asperelloides* strain JM41R.'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**. Based upon its evaluation, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Trichoderma asperelloides* strain JM41R. Therefore, an exemption from the requirement of a tolerance is established for residues of *Trichoderma asperelloides* strain JM41R in or on all food commodities when used in accordance with label directions and good agricultural practices.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes for the reasons contained in the April 20, 2015, document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for *Trichoderma asperelloides* strain JM41R'' and because EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

IV. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 2, 2015.

Jack E. Housenger,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Add § 180.1331 to subpart D to read as follows:

§ 180.1331 Trichoderma asperelloides strain JM41R; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Trichoderma asperelloides* strain JM41R in or on all food commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2015–11960 Filed 5–15–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket Nos. 13–238 and 13–32, WC Docket No. 11–59; FCC 14–153]

Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, certain information collection requirements associated with the Commission's *Report and Order* regarding the Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, FCC 14–153. This document is consistent with the *Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the new information collection requirements.

DATES: 47 CFR 1.40001(c)(3)(i), 1.140001(c)(3)(iii), and 1.140001(c)(4), published at 80 FR 1238, January 8, 2015, are effective on May 18, 2015.

FOR FURTHER INFORMATION CONTACT: Cathy Williams by email at *Cathy.Williams@fcc.gov* and telephone at (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on May 5, 2015, OMB approved certain information collection requirements contained in the Commission's *Report and Order,* FCC 14–153, published at 80 FR 1238, January 8, 2015. The OMB Control Number is 3060–1208. The Commission publishes this document as an announcement of the effective date of these information collection requirements.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on May 5, 2015, for the new information collection requirements contained in the Commission's rules at 47 CFR 1.40001(c)(3)(i), 1.140001(c)(3)(iii), and 1.140001(c)(4). Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1208.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1208.

OMB Approval Date: May 5, 2015.

OMB Expiration Date: May 31, 2018.

Title: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies.

Form Number: N/A.

Respondents: Individuals or households, business or other for-profit entities, not-for-profit institutions and State, local or Tribal governments.

Number of Respondents and Responses: 1,350 respondents; 3,597 responses.

Estimated Time per Response: .5 hours to 1 hour.

Frequency of Response: Third-party disclosure reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Sections 1, 2, 4(i), 7, 201, 301, 303, and 309 of the Communications Act of 1934, as amended, and Sections 6003, 6213, and 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156, 47 U.S.C. 151, 152, 154(i), 157, 201, 301, 303, 309, 1403, 1433, and 1455(a).

Total Annual Burden: 3,535 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Impact Assessment: This information collection may affect individuals or households. However, the information collection consists of third-party disclosures in which the Commission has no direct involvement. Personally identifiable information (PII) is not being collected by, made available to, or made accessible by the Commission. There are no additional impacts under the Privacy Act.

Needs and Uses: The Commission requested OMB approval for new disclosure requirements pertaining to subpart CC of part 1 of the Commission's rules. This subpart was adopted to implement and enforce Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. Section 6409(a) provides, in part, that ''a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.'' *47 U.S.C. 1455(a)(1).* In subpart CC, the Commission adopted definitions of ambiguous terms, procedural requirements, and remedies to provide guidance to all stakeholders on the proper interpretation of the provision and to enforce its requirements, reducing delays in the review process for wireless infrastructure modifications and facilitating the rapid deployment of wireless infrastructure.

The following are the information collection requirements in connection with subpart CC of part 1 of the Commission's rules:

- 47 CFR 1.40001(c)(3)(i)—To toll the 60-day review timeframe on grounds that an application is incomplete, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of Section 1.40001.
- 47 CFR 1.40001(c)(3)(iii)—Following a supplemental submission from the applicant, the State or local government will have 10 days to notify the applicant in writing if the supplemental submission did not provide the information identified in the State or local government's original

notice delineating missing information. The timeframe for review is tolled in the case of second or subsequent notices of incompleteness pursuant to the procedures identified in paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

- 47 CFR 1.40001(c)(4)—If a request is deemed granted because of a failure to timely approve or deny the request, the deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

These collections are necessary to effectuate the rule changes that implement and enforce the requirements of Section 6409(a).

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Managing Director.

[FR Doc. 2015–11810 Filed 5–15–15; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 80, No. 95
Monday, May 18, 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 HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0255]

RIN 1625–AA00

Safety Zones; Seattle Seafair 4th of July Fireworks Display, Lake Union, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Lake Union for the Seattle Seafair 4th of July fireworks display. The safety zone is necessary to help ensure the safety of the maritime public during the display and will do so by prohibiting all persons and vessels from entering the safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before June 17, 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 Petty Officer Kenneth Hoppe, Waterways Management Division, Sector Puget Sound, U.S. Coast Guard; telephone (206) 217–6051, email *SectorPugetSoundWWM@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. 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–2015–0255] 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–2015–0255) 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, using one of the 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**.

B. Basis and Purpose

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

The Seattle Seafair 4th of July fireworks display will take place this year in Lake Union. Fireworks displays create hazardous conditions for the maritime public because of the large number of vessels that congregate near the displays as well as the noise, falling debris, and explosions that occur during the event. A safety zone is necessary in order to prevent vessels from congregating in the proximity of the firework discharge site to ensure maritime public safety.

C. Discussion of Proposed Rule

Due to the hazards associated with the fireworks display, the Coast Guard is proposing to establish a temporary safety zone in Lake Union, WA in a 300 yard radius around the point 47°38′24.85″ N, 122°20′3.81″ W. The safety zone would be effective from 5:00 p.m. on July 4 until 1:00 a.m. on July 5, 2015.

All persons and vessels would be prohibited from entering the safety zone during the dates and times they are effective unless authorized by the Captain of the Port or his Designated Representative.

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. This rule is not a significant regulatory action because it creates a safety zone that is minimal in size and short 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 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 rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through the established safety zone during the times of enforcement. This rule will not have a significant economic impact on a substantial number of small entities because the temporary safety zone is minimal in size and short in duration, maritime traffic will be able to transit around it and may be permitted to transit through with the permission from the Captain of the Port or a Designated 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 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 that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a temporary safety zone around a fireworks display in Lake Union. 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 proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–288 to read as follows:

§ 165.T13–288 Safety Zone; Seattle Seafair 4th of July; Lake Union, WA.

(a) *Location.* The following area is designated as a temporary safety zone: All waters within a 300 yard radius around the point 47°38′24.85″ N, 122°20′3.81″ W.

(b) *Regulations.* In accordance with the general regulations in subpart C of this part, no vessel operator may enter, transit, moor, or anchor within this safety zone, except for vessels authorized by the Captain of the Port or Designated Representatives. Designated Representatives are Coast Guard Personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. See subpart C of this part, for additional information and requirements.

(c) *Authorization.* All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or Designated representative by contacting either the on-scene patrol craft on VHF Ch 13 or Ch 16 or the Coast guard Sector Puget Sound Joint Harbor Operations Center (JHOC) via telephone at (206) 217–6002.

(d) *Enforcement period.* This rule is effective from 5:00 p.m. on July 4, 2015, until 1:00 a.m. on July 5, 2015.

Dated: April 30, 2015.

M.W. Raymond,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2015–11938 Filed 5–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0254]

RIN 1625–AA00

Safety Zones; San Juan Island Independence Day Celebration, Friday Harbor, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Friday Harbor for the San Juan Island Independence Day Celebration fireworks display. The safety zone is necessary to help ensure the safety of the maritime public during the display and will do so by prohibiting all persons and vessels from entering the safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before June 17, 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 Petty Officer Kenneth Hoppe, Waterways Management Division, Sector Puget Sound, U.S. Coast Guard; telephone (206) 217–6051, email *SectorPugetSoundWWM@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. 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–2015–0254] 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–2015–0254) 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, using one of the 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**.

B. Basis and Purpose

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

The San Juan Island Independence Day Celebration fireworks display will be held on July 4, 2015. Fireworks displays create hazardous conditions for the maritime public because of the large number of vessels that congregate near the displays as well as the noise, falling debris, and explosions that occur during the event. A safety zone is necessary in order to prevent vessels from congregating in the proximity of the firework discharge site to ensure maritime public safety.

C. Discussion of Proposed Rule

In order to mitigate the hazards associated with the fireworks display, the Coast Guard is proposing to establish a temporary safety zone in Friday Harbor, WA in a 200 yard radius around the point 48°32.471′ N, 123°0.714′ W. This safety zone would be in effect from 5:00 p.m. on July 4 until 1:00 a.m. on July 5, 2015.

All persons and vessels would be prohibited from entering the safety zone during the dates and times they are effective unless authorized by the Captain of the Port or his Designated Representative.

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. This rule is not a significant regulatory action because it creates a safety zone that is minimal in size and short 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 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 rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through the established safety zone during the times of enforcement. This rule will not have a significant economic impact on a substantial number of small entities because the temporary safety zone is minimal in size and short in duration, maritime traffic will be able to transit around it and may be permitted to transit through with the permission from the Captain of the Port or a Designated 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 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 that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a temporary safety zone around a fireworks display in Friday Harbor. 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 proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–286 to read as follows:

§ 165.T13–286 Safety Zone; San Juan Island Independence Day Celebration; Friday Harbor, WA.

(a) *Location.* The following area is designated as a temporary safety zone:

(1) All waters within a 200 yard radius around the point 48°32.471′ N, 123°0.714′ W.

(2) [Reserved]

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no vessel operator may enter, transit, moor, or anchor within this safety zone, except for vessels authorized by the Captain of the Port or Designated Representatives. Designated Representatives are Coast Guard

Personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. See 33 CFR part 165, subpart C, for additional information and requirements.

(c) *Authorization.* All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or Designated representative by contacting either the on-scene patrol craft on VHF Ch 13 or Ch 16 or the Coast guard Sector Puget Sound Joint Harbor Operations Center (JHOC) via telephone at (206) 217–6002.

(d) *Enforcement Period.* This rule is effective from 5:00 p.m. on July 4, 2015, until 1:00 a.m. on July 5, 2015.

Dated: May 1, 2015.

M.W. Raymond,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2015–11939 Filed 5–15–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0351; FRL–9927–81–Region 8]

Approval and Promulgation of State Implementation Plans; State of Wyoming; Interstate Transport of Pollution for the 2006 24-Hour $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve portions of an August 19, 2011 State Implementation Plan (SIP) submission from the State of Wyoming that are intended to demonstrate that its SIP meets certain interstate transport requirements of the Clean Air Act (Act or CAA) for the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). This submission addresses the requirement that Wyoming's SIP contain adequate provisions prohibiting air emissions that will have certain adverse air quality effects in other states. Specifically, EPA is proposing to approve the portion of the Wyoming SIP submission that addresses the significant contribution to nonattainment and interference with maintenance transport requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA is also proposing to approve the interference with prevention of significant deterioration (PSD) of air quality transport requirement for this NAAQS, and is not proposing action on the interference with visibility transport requirement at this time. EPA will address the visibility requirement for this NAAQS in a separate future action.

DATES: Comments must be received on or before June 17, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0351, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Email: clark.adam@epa.gov*.
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2012–0351. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I, General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@epa.gov*.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *CAIR* mean or refer to the Clean Air Interstate Rule.

(iii) The initials *CSAPR* mean or refer to the Cross-State Air Pollution Rule.

(iv) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(v) The initials *NAAQS* mean or refer to the National Ambient Air Quality Standards.

(vi) The initials *NSR* mean or refer to New Source Review.

(vii) The initials $PM_{2.5}$ mean or refer to fine particulate matter.

(viii) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(ix) The initials *SIP* mean or refer to State Implementation Plan.

(x) The initials *TSD* mean or refer to Technical Support Document.

(xi) The initial ug/m^3 mean or refer to micrograms per cubic meter.

(xii) The initials *WDEQ* mean or refer to the Wyoming Department of Environmental Quality.

(xiii) The words *Wyoming* and *State* mean the State of Wyoming, unless the context indicates otherwise.

Table of Contents

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD

ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. 2006 $PM_{2.5}$ NAAQS and Interstate Transport

On September 21, 2006, EPA promulgated a final rule revising the 1997 24-hour primary and secondary NAAQS for $PM_{2.5}$ from 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$ (October 17, 2006, 71 FR 61144).

Section 110(a)(1) of the CAA requires each state to submit to EPA, within three years (or such shorter period as the Administrator may prescribe) after the promulgation of a primary or secondary NAAQS or any revision thereof, a SIP that provides for the ''implementation, maintenance, and enforcement'' of such NAAQS. EPA refers to these specific submittals as ''infrastructure'' SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS. For the 2006 24-hour $PM_{2.5}$ NAAQS, these infrastructure SIPs were due on September 21, 2009. CAA section 110(a)(2) includes a list of specific elements that ''[e]ach such plan submission'' must meet.

The interstate transport provisions in CAA section 110(a)(2)(D)(i) (also called ''good neighbor'' provisions) require each state to submit a SIP that prohibits emissions that will have certain adverse air quality effects in other states. CAA section 110(a)(2)(D)(i) identifies four distinct elements related to the impacts of air pollutants transported across state lines. The two elements under 110(a)(2)(D)(i)(I) require SIPs to contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will (element 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (element 2) interfere with maintenance by any other state with respect to the same NAAQS. The two elements under 110(a)(2)(D)(i)(II) require SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C (element 3) to prevent significant deterioration of air quality or (element 4) to protect visibility. In this action, EPA is addressing elements one, two and three of CAA section 110(a)(2)(D)(i).

B. Rules Addressing Interstate Transport for the 2006 $PM_{2.5}$ NAAQS

EPA has previously addressed the requirements of CAA section 110(a)(2)(D)(i)(I) in past regulatory actions.[1] Most recently, EPA published the final Cross State Air Pollution Rule (CSAPR or ''Transport Rule'') to address CAA section 110(a)(2)(D)(i)(I) in the eastern portion of the United States with respect to the 2006 $PM_{2.5}$ NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 1997 8-hour ozone NAAQS (August 8, 2011, 76 FR 48208). CSAPR replaces the earlier Clean Air Interstate Rule (CAIR) which was judicially remanded.[2] *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). On August 21, 2012, the U.S. Court of Appeals for the D.C. Circuit issued a decision vacating CSAPR, s*ee EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), and ordering EPA to continue implementing CAIR in the interim. However, on April 29, 2014, the U.S. Supreme Court reversed and remanded the D.C. Circuit's ruling and upheld EPA's approach in the CSAPR. *EPA* v. *EME Homer City Generation, L.P.,* 134 S.Ct. 1584, 1610 (2014). After the U.S. Supreme Court decision, EPA filed a motion to lift the stay on CSAPR and asked the D.C. Circuit to toll CSAPR's compliance deadlines by three years. On October 23, 2014 the D.C. Circuit granted EPA's motion and lifted the stay on CSAPR. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. Oct. 23, 2014), Order at 3. EPA began CSAPR implementation on January 1, 2015 pursuant to the D.C. Circuit's directive lifting the stay. The State of Wyoming was not covered by CSAPR, and EPA made no determinations in the rule regarding whether emissions from sources in Wyoming significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in another state.

C. EPA Guidance

On September 25, 2009, EPA issued a guidance memorandum that provides recommendations to states for making submissions to meet the requirements of CAA section 110(a)(2)(D)(i) for the 2006 $PM_{2.5}$ standards (''2006 $PM_{2.5}$ NAAQS Infrastructure Guidance'' or ''Guidance'').[3] With respect to element 1 of CAA section 110(a)(2)(D)(i) to prohibit emissions that will contribute significantly to nonattainment of the NAAQS in any other state, the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance advised states to include in their section 110(a)(2)(D)(i)(I) SIP submissions an adequate technical analysis to support their conclusions regarding interstate pollution transport, *e.g.,* information concerning emissions in the state, meteorological conditions in the state and in potentially impacted states, monitored ambient pollutant concentrations in the state and in potentially impacted states, distances to the nearest areas not attaining the NAAQS in other states, and air quality modeling.[4]

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[1] *See* NO_X SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); and Transport Rule or Cross-State Air Pollution Rule, 76 FR 48208 (August 8, 2011).

[2] CAIR addressed the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, and the 1997 8-hour ozone NAAQS. It did not address the 2006 24-hour $PM_{2.5}$ NAAQS.

[3] *See* Memorandum from William T. Harnett entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' September 25, 2009, available at *http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf.*

[4] The 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance stated that EPA was working on a new rule to replace CAIR that would address issues raised by the court in the *North Carolina* case and that would

Continued

With respect to element 2 of CAA section 110(a)(2)(D)(i) to prohibit emissions that would interfere with maintenance of the NAAQS by any other state, the Guidance stated that SIP submissions must address this independent and distinct requirement of the statute and provide technical information appropriate to support the State's conclusions, and suggested consideration of the same technical information that would be appropriate for element 1 of this CAA requirement.

In this action, EPA is proposing to use the conceptual approach to evaluating interstate pollution transport under CAA section 110(a)(2)(D)(i)(I) that EPA explained in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance and CSAPR. As such, we find that the CAA section 110(a)(2)(D)(i)(I) SIP submission from Wyoming may be evaluated using a ''weight of evidence'' approach that takes into account available relevant information, including the factors recommended in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance. These submissions can rely on modeling when acceptable modeling technical analyses are available, but EPA does not believe that modeling is necessarily required if other available information is sufficient to evaluate the presence or degree of interstate transport in a given situation.

With respect to the requirements in section 110(a)(2)(D)(i)(II) which address elements 3 (PSD) and 4 (visibility), EPA most recently issued an infrastructure guidance memo on September 13, 2013 that included guidance on these two elements.[5] For the purposes of this action, this memo will hereon be referred to as the ''2013 I–SIP Guidance.''

III. Wyoming's Submittal

On August 19, 2011, the Wyoming Department of Environmental Quality (WDEQ) made a submission certifying that Wyoming's SIP is adequate to implement the 2006 24-hour $PM_{2.5}$ NAAQS for all the ''infrastructure'' requirements of CAA section 110(a)(2). In this analysis, WDEQ simply listed the regulatory and non-regulatory documents that it felt demonstrated the Wyoming SIP's adequacy to meet the 110(a)(2) requirements with respect to the 2006 24-hour $PM_{2.5}$ NAAQS.[6]

To meet the requirements of CAA sections 110(a)(2)(D)(i)(I) (elements 1 and 2), WDEQ's submission referenced the State's May 3, 2007 interstate transport SIP. The May 3, 2007 SIP was determined by EPA to meet the interstate transport requirements of CAA section 110(a)(2)(D)(i) for the 1997 ozone and $PM_{2.5}$ NAAQS, and was therefore approved by EPA on May 8, 2008 (73 FR 26019). However, Wyoming's May 3, 2007 SIP did not address the 2006 24-hour $PM_{2.5}$ NAAQS. On April 23, 2015, WDEQ sent EPA a letter clarifying that it considered the factors relied upon as part of the May 3, 2007 submittal to also be applicable to a transport analysis for the 2006 24-hour $PM_{2.5}$ NAAQS.[7]

To meet the element 3 (PSD) requirement of CAA section 110(a)(2)(D)(i), Wyoming referenced Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 6, section 2, Permit requirements for construction, modification, and operation, as well as its May 3, 2007 Interstate Transport SIP. In its April 23, 2015 letter to EPA, Wyoming clarified its element 3 submittal by indicating that it will issue permits to sources locating in nonattainment areas pursuant to 40 CFR part 51, appendix S until it has a SIP-approved nonattainment NSR program.

IV. EPA's Evaluation

To determine whether the CAA section 110(a)(2)(D)(i)(I) requirement is satisfied, EPA first determines whether a state's emissions contribute significantly to nonattainment or interfere with maintenance in other states. If a state is determined not to have such contribution or interference, then section 110(a)(2)(D)(i)(I) does not require any changes to that state's SIP.

Consistent with the first step of EPA's approach in the 1998 NO_X SIP call, the 2005 CAIR, and the 2011 CSAPR, EPA evaluated impacts of emissions from Wyoming with respect to specific ambient air monitors identified as having nonattainment and/or maintenance problems, which we refer to as ''receptors.'' To evaluate these impacts, and in the absence of relevant modeling of Wyoming emissions, EPA examined factors suggested by the 2006 Guidance such as monitoring data, topography, and meteorology. EPA notes that no single piece of information is by itself dispositive of the issue. Instead, the total weight of all the evidence taken together is used to evaluate significant contributions to nonattainment or interference with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in another state.

As noted above, Wyoming's August 19, 2011 submission does not include a technical demonstration specific to the 2006 24-hour $PM_{2.5}$ NAAQS. Rather, the State relied on the transport analysis it conducted for a previous $PM_{2.5}$ NAAQS, later clarifying that it had considered parts of this analysis to be relevant for the purposes of the 2006 $PM_{2.5}$ standard. While EPA does not agree with the State's position that the analysis from its May 3, 2007 is also applicable to the 2006 24-hour $PM_{2.5}$ NAAQS, we agree with Wyoming's determination that the existing SIP has adequate provisions to meet the CAA requirements based on EPA's supplemental evaluation. For this reason, we propose to approve the 110(a)(2)(D)(i)(I) portion of the submission based on EPA's supplemental evaluation of relevant technical information. Our evaluation demonstrates that emissions from Wyoming do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in any other state and that the existing Wyoming SIP is, therefore, adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS.

Our supplemental evaluation considers several factors, including identification of the ambient air monitors in other states that are appropriate ''nonattainment receptors'' or ''maintenance receptors,'' consistent with EPA's approach in the CSAPR, and additional technical information to evaluate whether emissions from Wyoming contribute significantly to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS at these receptors.

Our Technical Support Document (TSD) contains a detailed evaluation and is available in the public docket for this rulemaking, which may be accessed online at *http://www.regulations.gov,* docket number EPA–R08–OAR–2012–0351. Below, we provide a summary of our analysis.

A. Identification of Nonattainment and Maintenance Receptors

EPA evaluated data from existing monitors over three overlapping 3-year periods (*i.e.,* 2009–2011, 2010–2012, and 2011–2013) to determine which areas are expected to be violating the 2006 24-hour $PM_{2.5}$ NAAQS and which

provide guidance to states in addressing the requirements related to interstate transport in CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. It also noted that states could not rely on the CAIR rule for section 110(a)(2)(D)(i)(I) submissions for the 2006 24-hour $PM_{2.5}$ NAAQS because the CAIR rule did not address this NAAQS. *See* 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance at 3.

[5] See ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' dated September 13, 2013, in the docket for this action.

[6] WDEQ's certification letter, dated August 19, 2011 is included in the docket for this action.

[7] Wyoming's clarification letter is available in the docket for this action. Wyoming's May 3rd, 2007 Interstate Transport SIP can be found in the docket for that action (EPA–R08–OAR–2007–0648).

areas might have difficulty maintaining attainment of the standard. If a monitoring site measured a violation of the 2006 24-hour $PM_{2.5}$ NAAQS during the most recent 3-year period (2011–2013), then that monitor location was evaluated for purposes of the significant contribution to nonattainment (element 1) of section 110(a)(2)(D)(i). If, on the other hand, a monitoring site shows attainment of the 2006 24-hour $PM_{2.5}$ NAAQS during the most recent 3-year period (2011–2013) but a violation in at least one of the previous two 3-year periods (2010–2012 or 2009–2011), then that monitor location was evaluated for purposes of the interfere with maintenance (element 2) of section 110(a)(2)(D)(i).

This approach is similar to that used in the modeling done during the development of CSAPR, but differs in that it relies on monitoring data (rather than modeling) for the western states not included in the CSAPR modeling domain.[8] By this method, EPA has identified those areas with monitors to be considered ''nonattainment receptors'' or ''maintenance receptors'' for evaluating whether the emissions from sources in another state could significantly contribute to nonattainment in, or interfere with maintenance in, that particular area.

EPA continues to believe that the more widespread and serious transport problems in the eastern United States are analytically distinct. For the 2006 24-hour $PM_{2.5}$ NAAQS, EPA believes that nonattainment and maintenance problems in the western United States are relatively local in nature with only limited impacts from interstate transport. In CSAPR, EPA did not calculate the portion of any downwind state's predicted $PM_{2.5}$ concentrations that would result from emissions from individual western states, such as Wyoming. Accordingly, EPA believes that section 110(a)(2)(D)(i)(I) SIP submissions for states outside the geographic area analyzed to develop CSAPR may be evaluated using a ''weight of evidence'' approach that takes into account available relevant information, such as that recommended by the EPA in the Guidance. Such information may include, but is not limited to, the amount of emissions in the state relevant to the NAAQS in question, the meteorological conditions in the area, the distance from the state to the nearest monitors in other states that are appropriate receptors, or such other information as may be probative to consider as to whether sources in the state may contribute significantly to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in other states. These submissions can rely on modeling when acceptable modeling technical analyses are available, but EPA does not believe that modeling is necessarily required if other available information is sufficient to evaluate the presence or degree of interstate transport in a given situation.

B. Evaluation of Significant Contribution to Nonattainment

EPA reviewed technical information to evaluate the potential for Wyoming emissions to contribute significantly to nonattainment of the 2006 24-hour $PM_{2.5}$ NAAQS at specified monitoring sites in the Western U.S.[9] EPA first identified as ''nonattainment receptors'' all monitoring sites in the western states that had recorded $PM_{2.5}$ design values above the level of the 2006 24-hour $PM_{2.5}$ NAAQS (35 μg/m3) during the years 2011–2013.[10] See Section III of our TSD for more a more detailed description of EPA's methodology for selection of nonattainment receptors.

Because geographic distance is a relevant factor in the assessment of potential pollution transport, EPA first reviewed information related to potential transport of $PM_{2.5}$ pollution from Wyoming to the nonattainment receptors in states bordering Wyoming, which were located in Idaho, Montana and Utah. As detailed in our TSD, the following factors support a finding that emissions from Wyoming do not significantly contribute to nonattainment of the 2006 24-hour $PM_{2.5}$ NAAQS in Idaho, Montana and Utah: (1) Technical information, such as data from monitors in the vicinity of these nonattainment receptors, related to the nature of local emissions; (2) topographical considerations such as intervening mountain ranges which tend to create physical impediments for pollution transport; and (3) meteorological considerations such as prevailing winds. While none of these factors by itself would necessarily show non-contribution, when taken together in a weight-of-evidence assessment they are sufficient for EPA to determine that emissions from Wyoming do not significantly contribute to nonattainment at the Idaho, Montana and Utah receptors.

EPA also evaluated potential $PM_{2.5}$ transport to nonattainment receptors in the more distant western states of Oregon and California. The following factors support a finding that emissions from Wyoming do not significantly contribute to nonattainment of the 2006 24-hour $PM_{2.5}$ NAAQS in any of these states: (1) The significant distance from Wyoming to the nonattainment receptors in these states; (2) technical information, such as data from nearby monitors related to the nature of local emissions; and (3) the presence of intervening mountain ranges, which tend to impede pollution transport.

Based on our evaluation, we propose to conclude that emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors from sources in the State of Wyoming do not significantly contribute to nonattainment of the 2006 24-hour $PM_{2.5}$ standards in any other state, that the existing SIP for the State of Wyoming is adequate to satisfy the ''significant contribution'' requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2006 24-hour $PM_{2.5}$ standards, and that the State of Wyoming therefore does not need to adopt additional controls for purposes of implementing the ''significant contribution to nonattainment'' requirement of 110(a)(2)(D)(i)(I) with respect to that NAAQS at this time.

C. Evaluation of Interference With Maintenance

We also reviewed technical information to evaluate the potential for Wyoming emissions to interfere with maintenance of the 2006 24-hour $PM_{2.5}$ standards at specified monitoring sites in the Western U.S. EPA first identified as ''maintenance receptors'' all monitoring sites in the western states that had recorded $PM_{2.5}$ design values above the level of the 2006 24-hour $PM_{2.5}$ NAAQS (35 $\mu g/m^3$) during the 2009–2011 and/or 2010–2012 periods but below this standard during the

[8] As noted, the State of Wyoming was not included in the CSAPR modeling domain.

[9] EPA also considered potential $PM_{2.5}$ transport from Wyoming to the nearest nonattainment and maintenance receptors located in the eastern, midwestern and southern states covered by CSAPR and believes it is reasonable to conclude that, given the significant distance from Wyoming to the nearest such receptor (in Wisconsin) and the relatively insignificant amount of emissions from Wyoming that could potentially be transported such a distance when compared to downwind states whose contribution was modeled for CSAPR, emissions from Wyoming sources do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS at this location. These same factors also support a finding that emissions from Wyoming sources neither contribute significantly to nonattainment nor interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS at any location further east. *See* TSD at section I.B.3.

[10] Because CAIR did not cover states in the Western United States, these data are not significantly impacted by the remanded CAIR and thus could be considered in this analysis. In contrast, recent air quality data in the eastern, midwestern and southern states are significantly impacted by reductions associated with CAIR and because CSAPR was developed to replace CAIR, EPA could not consider reductions associated with the CAIR in the base case transport analysis for those states. *See* 76 FR at 48223–24.

2011–2013 period. See section III of our TSD for more information regarding EPA's methodology for selection of maintenance receptors. All of the maintenance receptors in the western states are located in California, Utah and Montana. EPA therefore evaluated the potential for transport of Wyoming emissions to the maintenance receptors located in these states. As detailed in our TSD, the following factors support a finding that emissions from Wyoming do not interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in those states: (1) Technical information, such as data from monitors near maintenance receptors, relating to the nature of local emissions, and (2) the significant distance between Wyoming and these maintenance receptors.

Based on this evaluation, EPA proposes to conclude that emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors from sources in the State of Wyoming do not interfere with maintenance of the 2006 24-hour $PM_{2.5}$ standards in any other state, that the existing SIP for the State of Wyoming is adequate to satisfy the ''interfere with maintenance'' requirements of CAA section 110(a)(2)(D)(i)(I), and that the State of Wyoming therefore does not need to adopt additional controls for purposes of implementing the ''interfere with maintenance'' requirements of CAA section 110(a)(2)(D)(i)(I) with respect to that NAAQS at this time.

D. Evaluation of Interference With Measures To Prevent Significant Deterioration

With regard to the PSD portion of CAA section 110(a)(2)(D)(i)(II), this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated new source review (NSR) pollutants and that satisfies the requirements of EPA's PSD implementation rules.[11] On December 6, 2013, EPA approved CAA section 110(a)(2) elements (C) and (J) for Wyoming's infrastructure SIP for the 2006 24-hour $PM_{2.5}$ NAAQS with respect to PSD requirements for regulated NSR pollutants (78 FR 73445). As discussed in detail in the proposed rulemaking for that final action, the concurrent approval of PSD-related revisions which incorporated certain requirements of the 2010 $PM_{2.5}$ Increment Rule to the Wyoming SIP action ensured that Wyoming's SIP-approved PSD program meets the current structural requirements of 110(a)(2)(C) and (J) to have a PSD program that applies to all regulated NSR pollutants.[12]

As stated in the 2013 I–SIP Guidance, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. One way a state may satisfy element 3 with respect to these sources is by citing an air agency's EPA-approved nonattainment NSR provisions addressing any pollutants for which the state has designated nonattainment areas. Alternatively, if an air agency makes a submission indicating that it issues permits pursuant to 40 CFR part 51, appendix S in a nonattainment area because a nonattainment NSR program for a particular NAAQS pollutant has not yet been approved by EPA for that area, that permitting program may generally be considered adequate for purposes of meeting the requirements of element 3 with respect to sources and pollutants subject to such program. Where neither of the circumstances described above exist, it may also be possible for EPA to find, given the facts of the situation, that other SIP provisions and/or physical conditions are adequate to prohibit interference by such sources with other air agencies' measures to prevent significant deterioration of air quality.

EPA recently finalized a rulemaking which disapproved a portion of Wyoming's May 10, 2011 SIP revision that attempted to add nonattainment NSR permitting requirements to the state plan for the first time (80 FR 9194, February 20, 2015). In this partial disapproval, EPA found that this SIP revision failed to create unambiguous and enforceable obligations for sources that would be subject to the nonattainment NSR requirements. Accordingly, the State does not currently have any SIP-approved nonattainment NSR permitting provisions which would subject sources locating in nonattainment areas in the State to regulation. The State has confirmed, via a clarification letter sent to EPA on April 23, 2015, that it will issue permits to sources locating in such nonattainment areas pursuant to 40 CFR part 51, appendix S until it has a SIP-approved nonattainment NSR program.[13]

Because the State has committed to applying appendix S until it has a SIP-approved nonattainment NSR program, EPA is proposing to approve the infrastructure SIP submission with regard to the requirements of element 3 of section 110(a)(2)(D)(i) for the 2006 24-hour $PM_{2.5}$ NAAQS.

V. Proposed Action

EPA is proposing to approve the 110(a)(2)(D)(i)(I) portion of Wyoming's August 19, 2011 submission. We propose to approve elements 1 and 2 of this portion of the submission based on EPA's supplemental evaluation of relevant technical information, which supports a finding that emissions from Wyoming do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in any other state and that the existing Wyoming SIP is, therefore, adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS.

EPA is also proposing to approve element 3 of 110(a)(2)(D)(i) from Wyoming's August 19, 2011 submission, based on a finding that the Wyoming SIP is adequate to meet the PSD requirement of CAA section 110(a)(2)(D)(i)(II).

VI. Statutory and Executive Orders Review

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions

[11] See 2013 I–SIP Guidance.

[12] As described in the proposed action (78 FR 54828, September 6, 2013) for the final December 6, 2013 rulemaking, EPA did not approve certain portions of the State's incorporation of the 2010 $PM_{2.5}$ Increment Rule because these portions were ultimately removed from EPA's PSD regulations.

[13] EPA notes that the State's application of appendix S would only currently apply to the Upper Green River Basin 2008 ozone nonattainment area. Wyoming has had a construction ban in place and approved into the SIP for over twenty years in order to meet nonattainment NSR requirements in the Sheridan coarse particulate matter (PM_{10}) nonattainment area (See WAQSR, Chapter 6, section 2(c)(ii)(B)).

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

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

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

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

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 1, 2015.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2015–11782 Filed 5–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2015–0227; FRL–9927–69–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Utah County—Trading of Motor Vehicle Emission Budgets for PM_{10} Transportation Conformity

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Utah. On March 9, 2015, the Governor of Utah submitted a revision to the Utah SIP, adding a new rule regarding trading of motor vehicle emission budgets for Utah County. The rule allows trading from the motor vehicle emissions budget for primary particulate matter of 10 microns or less in diameter (PM_{10}) to the motor vehicle emissions budget for nitrogen oxides (NO_X) which is a PM_{10} precursor. The resulting motor vehicle emissions budgets for NO_X and PM_{10} may then be used to demonstrate transportation conformity with the SIP. The EPA is proposing approval of this SIP revision in accordance with the requirements of section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 17, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2015–0227, by one of the following methods:

• *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Email: russ.tim@epa.gov.*

• *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

• *Mail:* Carl Daly, Director, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

• *Hand Delivery:* Carl Daly, Director, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instruction on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6479, *russ.tim@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule.

If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule.

EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the **ADDRESSES** section of this notice.

Please note that if EPA receives adverse comment on a distinct provision of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: May 1, 2015.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2015–11783 Filed 5–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2010–0750; FRL–9927–58–OAR]

RIN 2060–AQ60

Reconsideration Petition From Dyno Nobel Inc. on the New Source Performance Standards Review for Nitric Acid Plants; Final Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action denying petition for reconsideration.

SUMMARY: This action provides notice that on May 11, 2015, the U.S. Environmental Protection Agency (EPA) Administrator, Gina McCarthy, signed a letter denying a petition for reconsideration of the final New Source Performance Standards (NSPS) for Nitric Acid Plants published in the **Federal Register** on August 14, 2012. (77 FR 48433)

DATES: Effective May 18, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Nathan Topham, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0483; fax number: (919) 541–3207; email address: *topham.nathan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. How can I get copies of this document and other related information?

This **Federal Register** document, the petition for reconsideration, and the letter denying the petition for reconsideration are available in the docket the EPA established under Docket ID No. EPA–HQ–OAR–2010–0750. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center (EPA/DC), EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. 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 Air Docket is (202) 566–1742. This **Federal Register** document, the petition for reconsideration, and the letter denying the petition can also be found on the EPA's Web site at *http://www.epa.gov/ttn/oarpg.*

II. Judicial Review

Any petitions for review of the letter and enclosure denying the petition for reconsideration described in this document must be filed in the United States Court of Appeals for the District of Columbia Circuit by July 17, 2015.

III. Description of Action

A. Background

The initial Nitric Acid Plants NSPS were promulgated on December 23, 1971 (36 FR 24881) and codified at 40 CFR part 60, subpart G pursuant to section 111 of the Clean Air Act (CAA). Pursuant to section 111(b)(1)(B) of the CAA, we reviewed the NSPS three times over the past few decades. Based on the results of the third review, which we completed in August 2012, we determined it was appropriate to revise the NSPS. The revised NSPS were published in the **Federal Register** on August 14, 2012 (77 FR 48433). The revised NSPS (also referred to as the ''final rule'' in this document) included a change in the nitrogen oxides (NO_X) emission limit, from 3.0 pounds of NO_X per ton of nitric acid production (3.0 lb/T) on a 3-hour basis to 0.5 lb/T on a 30-day average basis, and additional testing and monitoring requirements. The final rule applies to new, modified or reconstructed nitric acid production units (NAPU) that commence construction, modification or reconstruction after October 14, 2011.

Throughout the rulemaking process, we received comments, data and information that supported these revisions. This information is available in the docket for this action. The revisions were proposed on October 14, 2011 (76 FR 63878). We received additional data and comments during the comment period. These data and comments were considered and analyzed and, where appropriate, revisions to the NSPS were made and incorporated into the final rule published on August 14, 2012.

On October 10, 2012, Dyno Nobel Inc. (DNI) submitted a petition for reconsideration of the final rule for nitric acid plants. Under section 307(d)(7)(B) of the CAA, a petitioner seeking reconsideration must show that the objection or objections raised in its reconsideration petition ''is of central relevance to the outcome of the rule.'' In the EPA's view, an objection is of central relevance to the outcome of the rule only if it provides substantial support for the argument that the promulgated regulation should be revised.

After carefully considering the petition and supporting information, the EPA Administrator, Gina McCarthy, denied the petition for reconsideration on May 11, 2015, in a letter to the petitioner. The EPA denied the petition because the information and analysis submitted by DNI is not of central relevance to the outcome of the rule, in that it does not demonstrate that the rule should be reconsidered. A summary of the petition issues and the EPA's responses are provided below. The letter from Administrator McCarthy and the accompanying enclosure, which are available in the docket for this action, explain in greater detail the issues presented in the petition, the EPA's responses to those issues, and the EPA's reasons for the denial.

B. Summary of Petition and the EPA's Responses

The main issues raised by DNI in their petition for reconsideration are the following: They believe the EPA should have established a subcategory and a different emissions limit for modified or reconstructed nitric acid plants that use non-selective catalytic reduction (NSCR); and they argue the EPA did not meet the legal requirement of having representative emission data to establish a new emission limit.

Regarding the petitioner's argument that the EPA should establish a subcategory for modified or reconstructed plants that use NSCR, we have several reasons why we disagree with this request.

First, the EPA believes it is inappropriate to establish subcategories based on differences in control technologies, so it is inappropriate to establish a subcategory for plants using NSCR.

Second, regarding the petitioner's argument that the EPA did not meet the legal requirement of having representative emission data to set an emission limit, we believe the agency had ample test data to support selective catalytic reduction as the best system of emission reduction and to establish a revised emission limit.

Third, although some units with NSCR may not be able to meet the limit without improving their controls, based on available data we believe it is feasible for some units with NSCR to comply with this NSPS without the need for any additional controls as some existing units with NSCR are already achieving the NSPS emission limit.

Finally, we believe other units with NSCR that are modified or reconstructed, could comply with the NSPS limit by improving their controls at reasonable costs.

Therefore, based on our review and evaluation of all issues raised by the petitioner and relevant available data and information, we have concluded that reconsideration is not warranted.

Dated: May 11, 2015.

Gina McCarthy,

Administrator.

[FR Doc. 2015–11958 Filed 5–15–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–BB40

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Omnibus Amendment To Simplify Vessel Baselines

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic and New England Fishery Management Councils have submitted an Omnibus Amendment to the Fishery Management Plans of the Northeastern United States to simplify vessel baselines. This amendment incorporates a draft Environmental Assessment and preliminary Regulatory Impact Review, for review and approval by the Secretary of Commerce, and NMFS is requesting comments from the public. The Omnibus Amendment to Simplify Vessel Baselines would eliminate the one-time limit on vessel upgrades and remove gross and net tonnages from vessel baseline specifications considered when determining a vessel's baseline for replacement purposes. Implementing these measures would reduce the administrative burden to permit holders and NMFS, and would have little effect on fleet capacity. This action would also remove the requirement for vessels to send in negative fishing reports (*i.e.,* ''did not fish'' reports) during months or weeks when fishing did not occur.

DATES: Comments must be received on or before July 17, 2015.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2011–0213, by any one of the following methods.

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2011-0213,*

2. Click the ''Comment Now!'' icon, complete the required fields

3. Enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the Omnibus Amendment to Simplify Vessel Baselines, and of the draft Environmental Assessment and preliminary Regulatory Impact Review (EA/RIR), are available from the Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930 The EA/RIR is also accessible via the Internet at: *www.greateratlantic.fisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978–281–9233.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any Fishery Management Plan (FMP) amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish notification in the **Federal Register** that the amendment is available for public review and comment. The New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC) approved this Baseline Amendment, which would simplify vessel baseline requirements, at their November 18, 2014, and October 8, 2014, meetings, respectively. NMFS prepared the amendment on behalf of the Councils and declared a transmittal date May 12, 2015. Both Councils have reviewed the Baseline Amendment proposed rule regulations as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the MSA. If approved by NMFS, this amendment would simplify the specifications considered when determining a vessel's baseline for replacement purposes developed by the MAFMC and NEFMC.

Background

The MAFMC developed the first limited entry program in 1977 for the surfclam/quahog fishery, which included restrictions on replacement vessels. This program required that a replacement vessel be of ''substantially similar capacity'' in an effort to maintain and not increase the harvest capacity of the fleet at that time. Over the following two decades, the MAFMC and NEFMC implemented additional limited entry programs. By 1998, there were four different sets of vessel upgrade and replacement restrictions among the various FMPs. The upgrade restrictions became confusing for fishing industry members with more than one limited access permit, because each permit had the potential to have different vessel upgrade regulations apply. In addition, some vessels added limited access permits to their vessel that originally qualified on another vessel that was a different size and/or horsepower. This results in a vessel having multiple baselines. Thus, in 1999, the MAFMC and NEFMC, in consultation with NMFS, developed an amendment to Achieve Regulatory Consistency on Permit Related Provisions for Vessels Issued Limited Access Federal Fishery Permits (64 FR 8263, February 19, 1999) (Consistency Amendment) to streamline and make consistent baseline provisions and upgrade restrictions across FMPs.

The Consistency Amendment standardized definitions and restrictions for vessel baselines, upgrades, and replacements across all limited access fisheries. It simplified regulations for vessel replacements, permit transfers, and vessel upgrades, making them consistent and less restrictive in order to facilitate business transactions. Although the Consistency Amendment did standardize the vessel baseline requirements for the fisheries of the northeast, some burdensome requirements remain. Under current restrictions, a vessel baseline is defined by vessel length overall, gross tonnage, net tonnage, and horsepower. We determine the baseline for a limited access permit based on the size (length, gross tonnage, and net tonnage) and horsepower of the first vessel issued a limited access permit for that fishery or, for fisheries that adopted baseline restrictions through the Consistency Amendment, the permitted vessel at the time the final rule became effective.

Current baseline regulations require that a replacement vessel or an upgrade made to an existing vessel with a

limited access permit be within 10 percent of the size and 20 percent of the horsepower of the permit's baseline vessel. To respect the NEFMC and the MAFMC's intended baseline restrictions of individual fisheries, for vessels with multiple baselines, we use the most restrictive of the baselines to judge the approval of a replacement vessel or upgrade, unless the permit holder chooses to relinquish the more restrictive permit. In addition, current baseline regulations limit permit holders to a one-time upgrade of the vessel size and horsepower specifications. For example, we limit a vessel owner that has a 60-ft (18.3-m) baseline length to upgrading to a vessel of up to 66 ft (20.1 m). However, if he moves his permit to a 62-ft (18.9-m) vessel for any reason, it would constitute his one-time size upgrade and he would lose the ability to later upgrade to a vessel of 66 ft (20.1 m). He would only be able to move his permit to a vessel of 62 ft (18.9 m) or less. Because he used his one-time size upgrade, he would not be able upgrade the vessel's tonnages. He would still be able to use his horsepower upgrade to upgrade his horsepower by 20 percent, but only once.

The Baseline Amendment would:

1. Eliminate gross and net tonnage from the baseline specifications considered when determining a vessel's baseline for replacement purposes. Both the Councils and NMFS consider tonnages the most variable of vessel baseline specifications and, therefore, they have little effect on limiting vessel capacity when compared to length and horsepower restrictions. There is more than one acceptable method of determining tonnages, and the tonnages of a vessel can vary significantly depending on whether an exact measurement or simplified calculation is used. In addition, vessel owners can circumvent net tonnage limits by modifying internal bulkheads. Eliminating tonnages would simplify the vessel baseline verification and replacement process. In addition, it could reduce the cost burden on the industry if they only need horsepower verification because this would eliminate the need for a marine survey prior to any permit transactions.

2. Remove the one-time limit on vessel upgrades. Eliminating the one-time upgrade limit would provide more flexibility for vessel owners in the selection of replacement vessels and upgrades to existing vessels. Some vessel owners have been constrained by the one-time limit because they or a previous owner did not maximize the one-time upgrade with a previous vessel replacement, due to cost or availability or for other reasons, and have since been unable to further upgrade the vessel. Eliminating the one-time limit would also simplify the baseline verification and vessel replacement process for vessel owners and NMFS by eliminating the need to research and document whether a vessel owner used the one-time upgrade during the vessel's entire limited access history.

This rule proposes to remove the requirement for vessels to send in negative fishing reports (*i.e.,* ''did not fish'' reports) during months or weeks when fishing did not occur. This was not part of the Baseline Amendment, but is the result of an internal review of the trip-level reporting requirements conducted by the joint Greater Atlantic Regional Fisheries Office-Northeast Fisheries Science Center Fishery Dependent Data Committee (FDDC) during the past year. The division of the Office of Management and Budget (OMB) responsible for the Paperwork Reduction Act (PRA), in the interest of reducing compliance costs for small businesses, noted a potential cost savings for fishermen if we remove the DNF report and asked that we investigate the possibility of removing it. As a result of that review, the FDDC has recommended that the negative fishing reports are no longer necessary because the ability to determine if a vessel has engaged in fishing activity and submitted required trip reports has increased in recent years due to improved trip-level data matching and the expansion of other monitoring systems (*e.g.,* Vessel Monitoring Systems). Therefore, in order to simplify the regulations and reduce reporting burdens for the industry, we are proposing to eliminate the requirement in this action under the Secretary's authority at section 305(d) of the Magnuson-Stevens Act. Vessel owners would still be required to report all fishing trip activity on a monthly or weekly basis, depending on the requirements associated with their vessel permits.

We are soliciting public comments on the Baseline Amendment and its incorporated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement the revised Baseline Amendment will be published in the **Federal Register** for additional public comment. NMFS will evaluate the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of the Baseline Amendment to be considered in the approval/disapproval decision on the amendment. All comments received by July 17, 2015, whether specifically directed to the Baseline Amendment or the proposed rule will be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received by close of business on the last day of the comment period. Comments received after that date will not be considered in the decision to approve or disapprove the revised Baseline Amendment, including those postmarked or otherwise transmitted by the last day of the comment period.

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

Dated: May 12, 2015.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–11902 Filed 5–15–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 80, No. 95
Monday, May 18, 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

National Organic Standards Board: Call for Nominations; Extension of Nomination Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of extension of nomination period.

SUMMARY: The Agricultural Marketing Service (AMS) published a notice soliciting nominations from qualified individuals to serve on the National Organic Standards Board (NOSB) in the **Federal Register** on April 9, 2015. Nominees will be considered for a 5-year NOSB term that will commence on January 24, 2016, and end January 23, 2021. The nomination period, as set in the notice, was to end on May 15, 2015. To ensure adequate opportunity for all interested members of the public to submit nominations for the NOSB, AMS is extending the nomination period by 30 days. Additional details can be found in the initial **Federal Register** notice at 68 FR 19059, and on the National Organic Program (NOP) Web site.

DATES: The nomination period for the notice published on April 9, 2015 (AMS–NOP–15–0005; NOP–15–04) is extended. Written nominations must be post-marked on or before June 17, 2015. Electronic submissions must be received on or before June 17, 2015.

ADDRESSES: Nominations should be sent to Rita Meade, USDA–AMS–NOP, 1400 Independence Avenue SW., Room 2648-So., Ag Stop 0268, Washington, DC 20250–0268 or via email to *Rita.Meade@ams.usda.gov.* Electronic submittals by email are preferred.

FOR FURTHER INFORMATION CONTACT: Michelle Arsenault, (202) 720–0081, Email: *Michelle.Arsenault@ams.usda.gov;* or Rita Meade, (202) 260–8636, Email: *Rita.Meade@ams.usda.gov.*

Dated: May 13, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–11947 Filed 5–15–15; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2015–0021]

Notice of Request To Extend a Currently Approved Information Collection: (Requirements for Official Establishments To Notify FSIS of Adulterated or Misbranded Product, Prepare and Maintain Written Recall Procedures, and Document Certain HACCP Plan Reassessments)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to extend the approved information collection regarding requirements for official establishments to notify FSIS of adulterated or misbranded product, prepare and maintain written recall procedures, and document certain HACCP plan reassessments. The approval for this information collection will expire on August 31, 2015. FSIS is making no changes to the approved collection. The public may comment on either the entire information collection or on one of its three parts.

DATES: Submit comments on or before July 17, 2015.

ADDRESSES: FSIS invites interested persons to submit comments on this information collection. Comments may be submitted by one of the following methods:

- Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov*. Follow the on-line instructions at that site for submitting comments.
- Mail, including CD–ROMs, etc.: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Docket Clerk, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- Hand- or courier-delivered submittals: Deliver to Patriots Plaza 3, 355 E Street SW., Room 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2015–0021. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov*.

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6067, South Building, Washington, DC 20250; (202) 690–6510.

SUPPLEMENTARY INFORMATION:

Title: Requirements for Official Establishments to Notify FSIS of Adulterated or Misbranded Product, Prepare and Maintain Written Recall Procedures, and Document Certain HACCP Plan Reassessments.

OMB Control Number: 0583–0144.

Expiration Date: 8/31/2015.

Type of Request: Extension of an approved information collection.

Abstract: FSIS, by delegation (7 CFR 2.18, 2.53), exercises the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

The regulations at 9 CFR 417.4(a)(3) require establishments to notify FSIS of adulterated or misbranded product, prepare and maintain written recall procedures, and document certain HACCP plan reassessments.

Accordingly, FSIS requires three information collection activities under these regulations. First, FSIS requires that official establishments notify the appropriate District Office that an adulterated or misbranded product received by or originating from the establishment has entered commerce, if the establishment believes or has reason to believe that this has happened. Second, FSIS requires that establishments prepare and maintain written procedures for the recall of meat and poultry products produced and shipped by the establishment for use should it become necessary for the establishment to remove product from commerce. These written recall procedures have to specify how the establishment will decide whether to conduct a product recall, and how the establishment will effect the recall should it decide that one is necessary. Finally, FSIS requires that establishments document each reassessment of the establishment's HACCP plans. FSIS requires establishments to reassess their HACCP plans annually and whenever any changes occur that could affect the hazard analysis or alter the HACCP plan. For annual reassessments, if the establishment determines that no changes are necessary, documentation of this determination is not necessary.

FSIS is requesting an extension of the approved information collection addressing paperwork and recordkeeping requirements for these three activities. FSIS has made the following estimates based upon an information collection assessment.

Estimate of Burden of Average Hours per Response: 1.159.

Respondents: Official meat and poultry products establishments.

Estimated Number of Respondents: 6,300.

Estimated Number of Responses: 40,960.

Estimated Number of Responses per Respondent: 6.5.

Estimated Total Annual Burden on Respondents: 47,475.

Copies of this information collection assessment can be obtained from Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence SW., Room 6077, South Building, Washington, DC 20250, (202)690–6510.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

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.

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.

How To File a Complaint of Discrimination

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).

Done at Washington, DC on: May 13, 2015.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2015–11999 Filed 5–15–15; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2015–0017]

Notice of Request for a New Information Collection: Certificates of Medical Examination

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to collect certificates of medical examination to determine whether or not an applicant for an FSIS Food Inspector, Consumer Safety Inspector, or Veterinary Medical Officer in-plant position meets the Office of Personnel Management (OPM) approved medical qualification standards.

DATES: Submit comments on or before July 17, 2015.

ADDRESSES: FSIS invites interested persons to submit comments on this information collection. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the

comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov*. Follow the on-line instructions at that site for submitting comments.

- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Docket Clerk, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E Street SW., Room 8–163A, Washington, DC 20250–3700

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2015–0017. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov*.

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6067, South Building, Washington, DC 20250; (202)690–6510.

SUPPLEMENTARY INFORMATION:

Title: Certificates of Medical Examination.

Type of Request: New information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary of Agriculture (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). FSIS protects the public by verifying that the nation's commercial supply of meat, poultry, and processed egg products is safe, wholesome, and correctly labeled and packaged.

Annually, the occupants of in plant positions in FSIS inspect more than 8 billion birds and more than 130 million head of livestock. Veterinary Medical Officers, Food Inspectors, and Consumer Safety Inspectors check animals before and after slaughter, preventing diseased animals from entering the food supply, and examining carcasses for visible defects that can affect safety and quality. Consumer Safety Inspectors work in processed product inspection, assuring products are processed under sanitary conditions, are not adulterated, and are truthfully labeled. Inspection activities of Veterinary Medical Officers, Food Inspectors, and Consumer Safety Inspectors are carried out in over 6,000 privately owned establishments nationwide.

The duties performed by in-plant inspection personnel can be arduous, requiring standing and walking 8–9 hours daily, often on slippery and hazardous surfaces. Work is typically performed in high humidity and, depending on weather conditions, warm or cold temperatures. The work involves frequent contact with animal tissues, animal body fluids, chemical sanitation rinses and water.

FSIS plans to request a new information collection to collect certificates of medical examination to determine whether or not an applicant for a Food Inspector, Consumer Safety Inspector, or Veterinary Medical Officer in-plant position meets the Office of Personnel Management (OPM)-approved medical qualification standards for the position. These new forms ensure accurate collection of the required data. The OPM-approved medical qualification standards apply only to positions in FSIS, not positions in other Federal agencies.

When requesting that applicants for the positions listed above undergo the medical examination, a representative of FSIS will notify the applicants in writing of the reasons for the examination, the process, and the consequences of the failure to report for an examination or provide medical documentation. Any physical condition which would hinder an individual's full, efficient, and safe performance of his or her duties will be considered disqualifying for employment, except when convincing evidence is presented that the individuals can perform the essential functions of the job efficiently and without hazard to themselves or others.

In accordance with the Rehabilitation Act of 1973, and the Americans with Disabilities Act Amendments Act of 2008, FSIS will make reasonable accommodations for the known physical or mental limitations of qualified individuals with disabilities unless the accommodation would impose an undue hardship on the operation of FSIS.

FSIS has made the following estimates on the basis of an information collection assessment.

Estimate of Burden: FSIS estimates that it will take each respondent 90 minutes to complete the form.

Respondents: FSIS Applicants for Food Inspector, Consumer Safety Inspector, and Veterinary Medical Officer in plant positions.

Estimated No. of Respondents: 500 respondents.

Estimated No. of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 750 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence SW., Room 6077, South Building, Washington, DC 20250, (202)690–6510.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

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.

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.

How to File a Complaint of Discrimination

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).

Done at Washington, DC on: May 13, 2015.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2015–11997 Filed 5–15–15; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Central Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Central Idaho Resource Advisory Committee (RAC) will meet in Jerome, Idaho. 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://fs.usda.gov/Sawtooth*

DATES: The meeting will be held on June 24, 2015, from 9:00 a.m. to 3:00 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 the Idaho Department of Fish and Game, 324 South 417 East, Jerome, Idaho.

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 the Sawtooth National Forest Supervisors Office, 2647 Kimberly Road East, Twin Falls, Idaho. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Julie Thomas, Designated Federal Officer, by phone at 208–737–3262 or via email at *jathomas@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:

1. Oral presentations from individuals or groups proposing projects for funding,

2. A question and answer perdiod for proponents; and

3. Reports from other projects presented at the end of the day.

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 May 29, 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 Julie Thomas, Designated Federal Officer, 2647 Kimberly Road East, Twin Falls, Idaho, 83301; by email to *jathomas@fs.fed.us,* or via facsimile to 208–737–3236.

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 12, 2015.

Kit T. Mullen,

Forest Supervisor.

[FR Doc. 2015–11906 Filed 5–15–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Assessment of Ecological/Social/Cultural/Economic Sustainability, Conditions, and Trends for the Gila National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of initiating the assessment phase of the Gila National Forest land management plan revision.

SUMMARY: The Gila National Forest, located in southwestern New Mexico, is initiating the forest planning process pursuant to the 2012 Forest Planning Rule. This process results in a Forest Land Management Plan which describes the strategic direction for management of forest resources for the next fifteen years on the Gila National Forest. The first phase of the process, the assessment phase, is beginning and interested parties are invited to contribute in the development of the assessment (36 CFR 219.6). The trends and conditions identified in the assessment will help in identifying the current plan's need for change, and aid in the development of plan components. The Forest hosted a series of community conversations with key stakeholders in March 2015. Additional public participation opportunities are forthcoming in the near future to discuss the assessment process—information on these opportunities and all future public participation opportunities will be made available on

the Gila Plan Revision Web site (see below for the link).

DATES: A draft of the assessment report for the Gila National Forest is expected to be completed by late spring 2016 and will be posted on the following Web site at *http://www.fs.usda.gov/detail/gila/home/?cid=STELPRD3828671.*

The Gila National Forest is currently inviting the public to engage in a collaborative process to identify relevant information and local knowledge to be considered for the assessment. Once the assessment is completed, the Forest will initiate procedures pursuant to the 2012 Planning Rule and the National Environmental Policy Act (NEPA) to prepare a forest plan revision.

ADDRESSES: Written comments or questions concerning this notice should be addressed to Gila National Forest, Attn.: Matt Schultz, 3005 E. Camino del Bosque, Silver City, NM 88061.

FOR FURTHER INFORMATION CONTACT: Matt Schultz, Forest Planner, 575–388–8280. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 5 a.m. and 5 p.m., Pacific Time, Monday through Friday. More information on the planning process can also be found on the Gila National Forest Web site at *http://www.fs.usda.gov/detail/gila/home/?cid=STELPRD3828671.*

SUPPLEMENTARY INFORMATION: The National Forest Management Act (NFMA) of 1976 requires that every National Forest System (NFS) unit develop a land management plan. On April 9, 2012, the Forest Service finalized its land management planning rule (2012 Planning Rule), which provides broad programmatic direction to National Forests and National Grasslands for developing and implementing their land management plans. Forest plans describe the strategic direction for management of forest resources for fifteen years, and are adaptive and amendable as conditions change over time.

Under the 2012 Planning Rule, the assessment of ecological, social, cultural, and economic trends and conditions is the first stage of the planning process. The second stage is a plan development and decision process guided, in part, by the National Environment Policy Act (NEPA) and includes the preparation of a draft environmental impact statement and revised Forest Plan for public review and comment, and the preparation of the final environmental impact statement and revised Forest Plan, subject to the objection process 36 CFR 219 Subpart B prior to final plan approval. The third stage of the process is monitoring and feedback, which is ongoing over the life of the revised forest plans.

With this notice, the agency invites other governments, non-governmental parties, and the public to contribute to the development of the assessment report. The assessment will rapidly evaluate existing information about relevant ecological, economic, cultural and social conditions, trends, and sustainability within the context of the broader landscape. It will help inform the planning process through the use of Best Available Scientific Information, while also taking into account other forms of knowledge, such as local information, national perspectives, and native knowledge. Lastly, the assessment provides information that will help to identify the need to change the existing 1986 plan. Public engagement as part of the assessment phase supports the development of relationships of key stakeholders throughout the plan revision process, and is an essential step to understanding current conditions, available data, and feedback needed to support a strategic, efficient planning process.

As public meetings, public review and comment periods and other opportunities for public engagement are identified to assist with the development of the forest plan revision, public announcements will be made. Notifications will be posted on the Forest's Web site at *http://www.fs.usda.gov/detail/gila/home/?cid=STELPRD3828671* and information will be sent out to the Forest's mailing list. If anyone is interested in being on the Forest's mailing list to receive these notifications, please contact Matt Schultz, Forest Planner, at the mailing address identified above, or by sending an email to *gilaplan@fs.fed.us.* In compliance with the Freedom of Information Act (FOIA), please be advised that all information provided with your comments will become part of the public record and will be available for public inspection. This includes your name and all contact information provided.

Responsible Official

The responsible official for the revision of the land management plan for the Gila National Forest is David Warnack, acting Forest Supervisor, Gila National Forest, 3005 E. Camino del Bosque, Silver City, NM 88061.

Dated: April 24, 2015.

David Warnack

Acting Forest Supervisor.

[FR Doc. 2015–11911 Filed 5–15–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Final Record of Decision for Shoshone National Forest Land Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of plan approval for the Shoshone National Forest.

SUMMARY: Regional Forester Daniel J. Jiron signed the final Record of Decision (ROD) for the Shoshone National Forest revised Land Management Plan (Plan) on May 6, 2015. The Final ROD documents the Regional Forester's decision and rationale for approving the revised plan.

DATES: The effective date of the plan is 30 calendar days after this notice. To view the final ROD, revised Plan, FEIS errata, and other related documents please visit the Shoshone National Forest Web site at *http://www.fs.usda.gov/main/shoshone.*

FOR FURTHER INFORMATION CONTACT: Further information about the Shoshone planning process can be obtained from Olga Troxel during normal office hours (weekdays 8:00 a.m. to 4:30 p.m. Mountain Time) at the Shoshone National Forest Supervisor's Office (Address: Shoshone National Forest, 808 Meadow Lane, Cody, WY 82414); Phone/voicemail: (307) 527–6241.

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 revised plan describes desired conditions, objectives, standards, guidelines, and identifies lands suitable for various uses. The plan will guide project and activity decision making and all resource management activities on the Forest for the next 15 years. The plan is part of the long-range resource planning framework established by the Forest and Rangeland Renewable Resources Planning Act.

Dated: May 6, 2015.

Daniel J. Jiron,

Regional Forester, Rocky Mountain Region.

[FR Doc. 2015–11914 Filed 5–15–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

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: U.S. Census Bureau.

Title: Current Population Survey, Basic Demographic Items.

OMB Control Number: 0607–0049.

Form Number(s): There are no forms. We conduct all interviews on computers.

Type of Request: Emergency review.

Number of Respondents: 708,000.

Average Hours Per Response: 0.0273.

Burden Hours: 19,347.

Needs and Uses: The Census Bureau plans to request clearance from the Office of Management and Budget (OMB) for the collection of same sex marriage data as part of the basic demographic information on the Current Population Survey (CPS) beginning in June 2015. The current clearance expires July 31, 2017. The CPS has been the source of official government statistics on employment and unemployment for over 50 years. The Bureau of Labor Statistics (BLS) and the Census Bureau jointly sponsor the basic monthly survey. The Census Bureau also prepares and conducts all the field work. At the OMB's request, the Census Bureau and the BLS divide the clearance request in order to reflect the joint sponsorship and funding of the CPS program. The BLS submits a separate clearance request for the portion of the CPS that collects labor force information for the civilian non-institutional population. Some of the information within that portion includes employment status, number of hours worked, job search activities, earnings, duration of unemployment, and the industry and occupation classification of the job held the previous week.

The justification that follows is in support of the demographic data.

The demographic information collected in the CPS provides a unique set of data on selected characteristics for the civilian non-institutional population. Some of the demographic information we collect are age, marital status, gender, Armed Forces status, education, race, origin, and family income. We use these data in conjunction with other data, particularly the monthly labor force data, as well as periodic supplement data. We also use these data independently for internal analytic research and for evaluation of other surveys. In addition, we use these data as a control to produce accurate estimates of other personal characteristics.

Affected Public: Individuals or Households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182; and Title 29, United States Code, Sections 1–9.

This information collection request may be viewed at *www.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 13, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–11928 Filed 5–15–15; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1981]

Reorganization of Foreign-Trade Zone 175 Under Alternative Site Framework, Cedar Rapids, Iowa

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Cedar Rapids Airport Commission, grantee of Foreign-Trade Zone 175, submitted an application to the Board (FTZ Docket B–20–2014, docketed 3–6–2014) for authority to reorganize under the ASF with a service area of Appanoose, Benton, Blackhawk, Buchanan, Cedar, Clinton, Davis, Delaware, Des Moines, Dubuque, Grundy, Henry, Iowa, Jackson, Jefferson, Johnson, Jones, Keokuk, Lee, Linn, Louisa, Mahaska, Monroe, Muscatine, Poweshiek, Scott, Tama, Van Buren, Wapello, and Washington Counties, Iowa, adjacent to the Quad-Cities and Des Moines Customs and Border Protection ports of entry, FTZ 175's existing Site 1 would be categorized as a magnet site, and existing Site 2 would be removed from the zone;

Whereas, notice inviting public comment was given in the **Federal Register** (79 FR 13612, 3–11–2014) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the revised examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied if the service area is limited to Benton, Buchanan, Cedar, Clinton, Delaware, Johnson, Jones, Linn, Louisa, Muscatine and Scott Counties;

Now, Therefore, the Board hereby orders:

The application to reorganize FTZ 175 under the ASF is approved with a service area comprised of Benton, Buchanan, Cedar, Clinton, Delaware, Johnson, Jones, Linn, Louisa, Muscatine and Scott Counties, subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Signed at Washington, DC, this 8th day of May, 2015.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–11842 Filed 5–15–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–943 and C–570–944]

Certain Oil Country Tubular Goods From the People's Republic of China: Continuation of the Antidumping Duty Order and Countervailing Duty Order

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

SUMMARY: The Department of Commerce (the Department) and the International Trade Commission (the ITC) have determined that revocation of the antidumping duty (AD) order on certain oil country tubular goods (OCTG) from the People's Republic of China (PRC) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States. The Department and the ITC have also determined that revocation of

the countervailing duty (CVD) order on OCTG from the PRC would likely lead to continuation or recurrence of net countervailable subsidies and material injury to an industry in the United States. Therefore, the Department is publishing a notice of continuation of these AD and CVD orders.

DATES: *Effective date:* May 18, 2015.

FOR FURTHER INFORMATION CONTACT: David Cordell (AD Order), AD/CVD Operations, Office VI, or Shane Subler (CVD Order), AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0408 or (202) 482–0189, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2014, the Department initiated [1] and the ITC instituted [2] five-year (sunset) reviews of the AD and CVD orders on OCTG from the PRC,[3] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, the Department determined that revocation of the AD order would likely lead to continuation or recurrence of dumping and that revocation of the CVD order would likely lead to continuation or recurrence of net countervailable subsidies. Therefore, the Department notified the ITC of the magnitude of the margins and the subsidy rates likely to prevail should the orders be revoked, pursuant to sections 751(c)(1) and 752(b) and (c) of the Act.[4]

On May 12, 2015, the ITC published its determination that revocation of the AD and CVD orders on OCTG from the PRC would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to section 751(c) of the Act.[5]

Scope of the Order

The scope of this order consists of certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. Excluded from the scope of the order are casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise covered by the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The OCTG coupling stock covered by the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, and 7304.59.80.80.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Continuation of the Orders

As a result of the determinations by the Department and the ITC that revocation of the AD order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States and revocation of the CVD order would likely lead to continuation or recurrence of countervailable subsidies and material injury to an industry in the United States, pursuant to section 75l(d)(2) of the Act and 19 CFR 351.218(a), the Department hereby orders the continuation of the AD and CVD orders on OCTG from the PRC. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the AD and CVD orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), the Department intends to initiate the next five-year review of these orders not later than 30 days prior to the fifth anniversary of the effective date of this continuation notice.

These five-year sunset reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: May 12, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–11981 Filed 5–15–15; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Initiation of Five-Year (Sunset) Review,* 79 FR 71091 (December 1, 2014).

[2] *See Oil Country Tubular Goods From China; Institution of Five-Year Reviews,* 79 FR 71121 (December 1, 2014).

[3] *See Certain Oil Country Tubular Goods From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 75 FR 28551 (May 21, 2010) (*AD Amended Final Determination and Order*). *See also Certain Oil Country Tubular Goods From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 75 FR 3203 (January 20, 2010) (*CVD Order*).

[4] *See Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Expedited First Sunset Review of the Antidumping Duty Order,* 80 FR 18604 (April 7, 2015), and *Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Expedited First Sunset Review of the Countervailing Duty Order,* 80 FR 19282 (April 10, 2015).

[5] *See Certain Oil Country Tubular Goods From the People's Republic of China,* 80 FR 27189 (May 12, 2015).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 42 assessment webinars for Gulf of Mexico Red Grouper.

SUMMARY: The SEDAR 42 assessment of Gulf of Mexico Red Grouper will consist of a series of webinars. This notice is for a webinar associated with the Assessment portion of the SEDAR process. See **SUPPLEMENTARY INFORMATION**.

DATES: The final assessment webinar for SEDAR 42 will be held on Thursday, June 4, 2015, from 1 p.m. to 3 p.m. eastern time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; phone: (843) 571–4366; email: *julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; and (2) a series of assessment webinars; and (3) Review Workshop. The product of the Data Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Webinar Process is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses; and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment Process webinars are as follows:

1. Using datasets and initial assessment analysis recommended from the Data Workshop, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Panelists will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: May 13, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–11952 Filed 5–15–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

FY 2015 Regional Coastal Resilience Grants Program

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of funding availability.

SUMMARY: The purpose of this notice is to announce the policies and application procedures for the FY 2015 Regional Coastal Resilience Grants Program. Awards made under this program will support eligible entities as they develop or implement activities that build resilience of coastal regions, communities, and economic sectors to the negative impacts from extreme weather events, climate hazards, and changing ocean conditions.

Funds will be available to support activities that: (1) Identify and address priority data, information, and capacity gaps; (2) develop tools, as needed, to inform sound, science-based decisions, which support regional efforts to plan for a resilient ocean and coastal economy; (3) acquire and integrate socioeconomic information with physical and biological information to improve the assessment of risk and vulnerability for planning and decision making; (4) understand how hazards and changing ocean conditions affect coastal economies, including existing and emerging sectors that depend on the ocean and coasts; (5) develop the information and approaches needed for improved risk communication, and the necessary tools, technical assistance and training tailored toward enhanced resilience to weather events, climate hazards, and changing ocean conditions; (6) evaluate the costs, benefits, and tradeoffs of systems-based development or redevelopment approaches that incorporate both natural defenses and hard structural solutions; or (7) support the development of sustainable recovery, redevelopment, and adaptation plans and implement programs and projects that incentivize rebuilding and development approaches which reduce risk and increase resilience.

See the full FY 2015 Regional Coastal Resilience Grants Federal Funding Opportunity (FFO), located on Grants.gov, as described in the **ADDRESSES** section, for a complete description of program goals and how applications will be evaluated. Note that this funding opportunity is one of two competitions being administered by NOAA to build coastal resilience. The companion competition, the Coastal Ecosystem Resiliency Grants program, is being administered by NOAA's National Marine Fisheries Service to implement projects that use a proactive approach to improve or restore coastal habitat to strengthen the resilience of communities, protected resources and fisheries.

DATES: Applications must be postmarked, provided to a delivery service, or received by *www.Grants.gov* by 11:59 p.m. Eastern Time on July 24, 2015. See also Section IV.C and F of the Regional Coastal Resilience Grants FFO.

ADDRESSES: Application packages for proposals are available through the apply function on Grants.gov by searching for Funding Opportunity Number NOAA–NOS–OCM–2015–2004324. If an applicant does not have Internet access, application packages shall be requested from Lisa Warr, 1305 East-West Hwy, N/OCM6, Silver Spring, MD 20910; or contact her at 301–563–1153 or via email to *Lisa.S.Warr@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: For administrative or technical questions regarding this announcement, contact Lisa Warr, Office for Coastal Management, 1305 East-West Hwy, N/OCM6, Silver Spring, MD 20910; or contact her at 301–563–1153 or via email to *Lisa.S.Warr@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority: Coastal Zone Management Act (16 U.S.C. 1456c), Section 310 (''Technical Assistance'').

Catalog of Federal Domestic Assistance (CFDA): 11.473

Program Description

As noted above, the purpose of this notice is to announce the policies and application procedures for the FY 2015 Regional Coastal Resilience Grants Program. Awards made under this program will support eligible entities as they develop or implement activities that build resilience of coastal regions, communities, and economic sectors to the negative impacts from extreme weather events, climate hazards, and changing ocean conditions. Successful applicants will develop proposals that plan or implement actions that mitigate the impacts of these environmental drivers on overall resilience, including economic and environmental resilience.

Proposals submitted in response to this announcement shall employ a regional approach that results in improved ability of multiple coastal jurisdictions to prepare for, absorb impacts of, recover from, and/or adapt to adverse events and changing environmental, economic, and social conditions. Proposals should demonstrate coordinated effort of multiple jurisdictions (*e.g.,* states, tribes, territories, counties, municipalities, regional organizations, etc.) and/or state or local managed areas within a specified geographic region and involve the appropriate range of partners and stakeholders to ensure project success. Collaborative projects that leverage NOAA supported programs, products, partnerships or services and support federal, tribal, state, regional, county or local plans and partnerships are preferred. Also preferred are proposals that leverage other Administration priorities and other federal resilience investments.

Projects/proposals are expected to:

- Result in increased resilience of coastal communities through regional activities that reduce current and potential future risk associated with extreme weather events, climate hazards, and changing ocean conditions; increase capacity to recover from adverse events; and/or increase capacity to effectively adapt to adverse events;
- employ a regional approach that engages appropriate stakeholders and demonstrates collaboration and leveraging of resources;
- result in increased access to and/or understanding of information for decision makers regarding current and future environmental, economic, and social conditions and/or increased capacity to incorporate this type of information into decision/rule making across the project area.

Priority will be given to projects that:

- Focus on resilience strategies that address land and ocean use, development, resource management, resource protection, hazard mitigation, pre-disaster recovery, or other similar plans. This includes the creation of new tools, training, workshops, or other resources that build capacity of decision makers or practitioners;
- leverage available resources (such as programs, plans, partnerships, tools and trainings across government, industry, and NGOs) and/or leverage Federal funding with direct or in-kind match from non-Federal sources;
- evaluate project results using clear measure(s) of success and monitor longer-term effectiveness of employed strategies where appropriate. The collection of additional data or information for monitoring effectiveness is eligible; however, only for the duration of the award's period of performance. If data collection is proposed, applicants are encouraged to plan for longer-term data management needs in coordination with NOAA.

The funding instrument for awards may be a grant or cooperative agreement. In the case of a cooperative agreement, NOAA will have substantial involvement in the project. If NOAA is proposed as a partner in a cooperative agreement, the applicant must clearly identify this funding instrument in the proposal summary and cover sheet and clearly articulate the roles and responsibilities of NOAA and each partner in implementing the project.

Section IV.B. of the FFO describes the complete standard NOAA financial assistance application package and suggested information to include in the proposal.

This competition is one of two competitions being administered by NOAA to build coastal resilience. The companion competition, Coastal Ecosystem Resilience Grants, is being administered by NOAA's National Marine Fisheries Service (NMFS) to improve the resiliency of ocean and coastal ecosystems. The FFO for this program can also be found on *www.Grants.gov.*

Funding Availability

Total anticipated funding for all awards is up to $5,000,000 for FY 2015. NOAA anticipates funding approximately 5–10 awards. The maximum amount that may be requested for the Federal share of each proposal is $1,000,000 and the minimum that may be requested is $500,000. The amount of funding per project will depend on the size, location, and type of project. There is no limit on the number of proposals from any geographic area or jurisdiction. The exact amount of funds for each award will be determined in pre-award negotiations between the applicant and NOAA representatives. Applicants must be in good standing with all existing NOAA grants in order to receive funds. Proposals not funded in the current fiscal period may be considered for funding in another fiscal period without NOAA repeating the competitive process outlined in this announcement.

Eligibility

Eligible funding applicants are: Regional organizations (see Section III.C of the FFO for explanation), nonprofit

organizations, private (for-profit) entities, institutions of higher education, and state, territorial, tribal, and local governments as defined at 2 CFR 200.64, which includes counties, municipalities, and cities. The funding applicants must conduct projects benefiting coastal communities in one or more of the following U.S. states and territories: Alabama, Alaska, American Samoa, California, Connecticut, Delaware, Florida, Georgia, Guam, Hawaii, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Northern Mariana Islands, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Texas, Virginia, Virgin Islands (U.S.), Washington, and Wisconsin. Applications from individuals, federal agencies, or employees of federal agencies will not be considered, but these entities may serve as collaborative project partners. If federal agencies are collaborators, applicants must provide detail on the expected level of federal engagement in the application. The lead applicant on any proposal will be responsible for ensuring that allocated funds are used for the purposes of, and in a manner consistent with, this program, including any funds awarded to an eligible sub-awardee.

Cost Sharing Requirements

Federal funds awarded under this program must be matched with non-Federal funds (through cash or in-kind services) at a 2:1 ratio of Federal to non-Federal contributions.

Evaluation and Selection Procedures

The general evaluation criteria and selection factors that apply to full applications to this funding opportunity are summarized below. Further information about the evaluation criteria and selection factors can be found in the full FFO announcement in *www.Grants.gov.* (Funding Opportunity Number NOAA–NOS–OCM–2015–2004324)

Evaluation Criteria

Reviewers will assign scores to applications ranging from 0 to 100 points based on the following five standard NOAA evaluation criteria and respective weights specified below. Applications that best address these criteria will be the most competitive.

1. Importance and/or relevance and applicability of proposed project to the program goals (35 points): This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, federal, regional, state, tribal, or local activities. Projects/proposals will be evaluated according to the degree to which they:

- Support activities that are likely to reduce current and potential future risk to regions, communities, and existing and emerging sectors associated with extreme weather events, climate hazards, and changing ocean conditions; increase capacity to recover from adverse events; or increase capacity to effectively adapt to adverse events (10 points);
- employ a regional approach that engages a range of stakeholders and demonstrates collaboration and leveraging of resources, as evidenced by letters of collaboration from partners and community members (10 points);
- improve access to and/or understanding of information for decision makers regarding current and future environmental, economic, and social conditions and improve capacity to incorporate this information into planning and decision/rule making across the project area (10 points);
- support other NOAA and Administration priorities (5 points).

2. Technical and scientific merit (20 points): This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives. For this competition, projects/proposals will be evaluated according to the degree to which:

- The approach is fully described and the stated goals and objectives are technically sound, safe for the public, and use the appropriate methods and personnel, including any methods to evaluate results and monitor effectiveness, and methods outlined in the Data Sharing Plan (7 points);
- the project supports strategies called for or developed by regional, federal, state, tribal or local entities including but not limited to land and ocean use, development, resource management, resource protection/restoration, hazard mitigation, pre-disaster recovery, or other similar plans (8 points); and
- the project leverages available resources, such as programs, plans, partnerships, tools and trainings within NOAA and across government, industry, and NGOs (5 points).

3. Overall qualifications of the funding applicants (20 points): This criterion ascertains whether the funding applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project. For this competition, projects/proposals will be evaluated according to the degree to which:

- An applicant demonstrates the capacity (*e.g.* staffing, resources, expertise and authority) and experience in successfully completing similar projects (12 points); and
- the project involves the appropriate partners to execute the project, as well as the key personnel from other agencies and institutions partnering on the project with the experience, expertise and/or networks needed to capitalize on available expertise (8 points).

4. Project costs (15 points). This criterion evaluates the budget to determine if it is realistic and commensurate with the project needs and time-frame. For this competition, projects/proposals will be evaluated according to the degree to which:

- The budget request is reasonable, the applicant justifies the costs requested, and the requested funds for salaries and fringe benefits are for those personnel directly involved in implementing the proposed project and/or are directly related to specific products or outcomes of the proposed project (6 points);
- the project optimizes the cost effectiveness of the project to leverage Federal resources through strategic partnerships with collaborating institutions, agencies, or other entities (5 points); and,
- indirect costs are based on the indirect cost rate negotiated and approved by the applicant's cognizant agency for indirect costs and that other administrative costs have been minimized to the extent possible (4 points).

5. Outreach and Education (10 points): This criterion assesses whether the project provides a focused and effective education and/or outreach strategy regarding the NOAA's mission to understand and protect the Nation's natural resources. For this competition, this strategy should describe approaches for communicating with various audiences and employ best practices for risk communication. Projects/proposals will be evaluated according to the degree to which:

- Engagement: The proposal demonstrates that the public and project stakeholders will be engaged in development of the desired project outcomes (8 points); and
- Outreach: The proposal demonstrates that information generated by the project will reach its target audience and have a positive impact in the project area(s), including improved risk communication. (2 points).

Review and Selection Process

Screening, review, and selection procedures will take place in three steps: (1) An initial screening by competition program staff within NOAA's Office for Coastal Management; (2) a merit review; and (3) final selection by the Selecting Official (*i.e.,* Director of the Office for Coastal Management or the Director's designee). The merit review step will involve at least three reviewers per application. The Selecting Official will make the final decision regarding which applications will be funded based on the numerical ranking of the applications, the evaluations by the merit reviewers, and the selection factors set in Section V.C. of the FFO. (1) Initial Screening. The initial screening will ensure that application packages have all required forms and application elements and meet all of the eligibility criteria. Applications that pass this initial screening will be submitted for merit review. (2) Merit Review. Eligible applications for this competition will be evaluated in accordance with the criteria and weights described in this solicitation by at least three independent peer reviewers through an independent peer mail review and/or an independent peer panel. (3) Final Selection. The competition program staff will create a ranking of the proposals to be recommended for funding using the average merit review or panel review scores, if a panel review is conducted. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors: (1) Availability of funding; (2) balance/distribution of funds: (a) Geographically, (b) by type of institutions, (c) by type of partners, (d) by research areas, or (e) by project types; (3) whether the project duplicates other projects funded or considered for funding by NOAA or other agencies; (4) program priorities and policy factors as described in Section I.A. and I.B. of the FFO; (5) an applicant's prior award performance; (6) partnerships and/or participation of targeted groups; (7) adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the NOAA Grants Officer. The Selecting Official or designee may negotiate the funding level of the proposal.

Intergovernmental Review

Applications under the FFO are subject to Executive Order 12372, ''Intergovernmental Review of Programs.'' For states that participate in this process, it is the state agency's responsibility to contact their state's Single Point of Contact (SPOC) to find out about and comply with the state's process under Executive Order 12372. To assist the applicant, the names and addresses of the SPOCs are listed on the Office of Management and Budget's Web site *http://www.whitehouse.gov/omb/grants_spoc*.

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.,* the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). Applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required, or in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. Further details regarding NOAA's compliance with NEPA can be found in the full Federal Funding Opportunity.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2014 (79 FR 78390), are applicable to this solicitation.

Paperwork Reduction Act

The FFO contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132

It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Dated: May 13, 3015.

Christopher C. Cartwright,

Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 2015–11956 Filed 5–15–15; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD815

Takes of Marine Mammals Incidental to Specified Activities; Seabird Monitoring and Research in Glacier Bay National Park, Alaska, 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) regulations, we, NMFS, hereby give notification that the National Marine Fisheries Service has issued an Incidental Harassment Authorization (IHA) to Glacier Bay National Park (Glacier Bay NP), to take marine mammals, by Level B harassment, incidental to conducting seabird monitoring and research activities in Alaska, May through September, 2015.

DATES: Effective May 15, 2015, through September 30, 2015.

ADDRESSES: The public may obtain an electronic copy of Glacier Bay NP's application, supporting documentation, the authorization, and a list of the references cited in this document by visiting: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* In the case of problems accessing these documents, please call the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

The Environmental Assessment and associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act of 1969, are also available at the same site.

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; and requirements pertaining to the mitigation, 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 January 15, 2015, NMFS received an application from Glacier Bay NP requesting that we issue an Authorization for the take of marine mammals, incidental to conducting monitoring and research studies on glaucus-winged gulls (*Larus glaucescens*) within Glacier Bay National Park and Preserve in Alaska. NMFS determined the application complete and adequate on February 27, 2015.

NMFS previously issued an Authorization to Glacier Bay NP for the same activities in 2014 (79 FR 56065, September 18, 2014). No seabird research activities occurred during the effective period of the 2014 Authorization.

Glacier Bay NP proposes to conduct ground-based and vessel-based surveys to collect data on the number and distribution of nesting gulls within five study sites in Glacier Bay, AK. Glacier Bay NP proposes to complete up to five visits per study site, from May through September 2015.

The activities are within the vicinity of pinniped haulout sites and the following aspects of the proposed activities are likely to result in the take of marine mammals: Noise generated by motorboat approaches and departures; noise generated by researchers while conducting ground surveys; and human presence during the monitoring and research activities. NMFS anticipates that take by Level B harassment only, of individuals of harbor seals (*Phoca vitulina*) would result from the specified activity. Although Steller sea lions (*Eumetopias jubatus*) may be present in the action area, Glacier Bay NP has proposed to avoid any site used by Steller sea lions.

Description of the Specified Activity

Overview

Glacier Bay NP proposes to identify the onset of gull nesting; conduct mid-season surveys of adult gulls, and locate and document gull nest sites within the following study areas: Boulder, Lone, and Flapjack Islands, and Geikie Rock. Each of these study sites contains harbor seal haulout sites and Glacier Bay NP proposes to visit each study site up to five times during the research season.

Glacier Bay NP must conduct the gull monitoring studies to meet the requirements of a 2010 Record of Decision for a Legislative Environmental Impact Statement (NPS, 2010) which states that Glacier Bay NP must initiate a monitoring program for the gulls to inform future native egg harvests by the Hoonah Tlingit in Glacier Bay, AK. Glacier Bay NP actively monitors harbor seals at breeding and molting sites to assess population trends over time (*e.g.,* Mathews & Pendleton, 2006; Womble *et al.,* 2010). Glacier Bay NP also coordinates pinniped monitoring programs with NMFS' National Marine Mammal Laboratory and the Alaska Department of Fish & Game and plans to continue these collaborations and sharing of monitoring data and observations in the future.

Dates and Duration

The Authorization would be effective from May 15, 2015 through September 30, 2015. Following is a brief summary of the activities.

Glacier Bay NP proposes to conduct a maximum of three ground-based surveys per each study site and a maximum of two vessel-based surveys per each study site. NMFS refers the reader to the notice of proposed Authorization (80 FR 18359, April 6, 2015) for detailed information on the scope of the proposed activities.

Specified Geographic Region

The proposed study sites would occur in the vicinity of the following locations: Boulder (58°33′18.08″ N; 136°1′13.36″ W), Lone (58°43′17.67″ N; 136°17′41.32″ W), and Flapjack (58°35′10.19″ N; 135°58′50.78″ W) Islands, and Geikie Rock (58°41′39.75″ N; 136°18′39.06″ W) in Glacier Bay, Alaska. Glacier Bay NP will also conduct studies at Tlingit Point Islet located at 58°45′16.86″ N; 136°10′41.74″ W; however, there are no reported pinniped haulout sites at that location.

Detailed Description of Activities

Glacier Bay NP proposes to conduct: (1) Ground-based surveys at a maximum frequency of three visits per site; and (2) vessel-based surveys at a maximum frequency of two visits per site from the period of May 15 through September 30, 2015.

Ground-Based Surveys: These surveys involve two trained observers visiting the largest gull colony on each island to: (1) Obtain information on the numbers of nests, their location, and contents (*i.e.,* eggs or chicks); (2) determine the onset of laying, distribution, abundance,

and predation of gull nests and eggs; and (3) record the proximity of other species relative to colony locations.

The observers would access each island using a kayak, a 32.8 to 39.4-foot (ft) (10 to 12 meter (m)) motorboat, or a 12 ft (4 m) inflatable rowing dinghy. The landing craft's transit speed would not exceed 4 knots (4.6 miles per hour (mph). Ground surveys generally last from 30 minutes to up to two hours depending on the size of the island and the number of nesting gulls. Glacier Bay NP will discontinue ground surveys after they detect the first hatchling to minimize disturbance to the gull colonies.

Vessel-Based Surveys: These surveys involve two trained observers observing and counting the number of adult and fledgling gulls from the deck of a motorized vessel which would transit around each island at a distance of approximately 328 ft (100 m) to avoid flushing the birds from the colonies. Vessel-based surveys generally last from 30 minutes to up to two hours depending on the size of the island and the number of nesting gulls.

Comments and Responses

We published a notice of receipt of Glacier Bay NP's application and proposed Authorization in the **Federal Register** (80 FR 18359, April 6, 2015). During the 30-day comment period, we received one comment from the Marine Mammal Commission (Commission) which recommended that we issue the requested Authorization, provided that Glacier Bay NP carries out the required monitoring and mitigation measures as described in the notice of the proposed authorization (80 FR 18359, April 6, 2015) and the application. We have included all measures proposed in the notice of the proposed authorization (80 FR 18359, April 6, 2015) in the final Authorization.

We also received comments from one private citizen who opposed the authorization on the basis that NMFS should not allow any Authorizations for harassment. We considered the commenter's general opposition to Glacier Bay NP's activities and to our issuance of an Authorization. The Authorization, described in detail in the **Federal Register** notice of the proposed Authorization (80 FR 18359, April 6, 2015) includes mitigation and monitoring measures to effect the least practicable impact to marine mammals and their habitat. It is our responsibility to determine whether the activities will have a negligible impact on the affected species or stocks; will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, where relevant; and to prescribe the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, as well as monitoring and reporting requirements.

Regarding the commenter's opposition to authorizing harassment, the MMPA allows U.S. citizens (which includes Glacier Bay NP) to request take of marine mammals incidental to specified activities, and requires us to authorize such taking if we can make the necessary findings required by law and if we set forth the appropriate prescriptions. As explained throughout the **Federal Register** notice (80 FR 18359, April 6, 2015), we made the necessary preliminary findings under 16 U.S.C. 1361(a)(5)(D) to support issuance of Authorization.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammals most likely to be harassed incidental to conducting seabird monitoring and research are Pacific harbor seals. We do not anticipate harassment of Steller sea lions due to the researchers avoiding any site with Steller sea lions present.

NMFS refers the public to the Glacier Bay NP's application and the 2014 NMFS Marine Mammal Stock Assessment Report available online at: *http://www.nmfs.noaa.gov/pr/sars/species.htm* for further information on the biology and local distribution of these species.

Other Marine Mammals in the Proposed Action Area

Northern sea otters (*Enhydra lutris kenyoni*) and polar bears (*Ursis maritimus*) listed as threatened under the Endangered Species Act could occur in the proposed area. The U.S. Fish and Wildlife Service manages these species and we do not consider them further in this notice of issuance of an Authorization.

Potential Effects of the Specified Activities on Marine Mammals

Acoustic and visual stimuli generated by: (1) Noise generated by kayak, motorboat, or dinghy approaches and departures; (2) human presence during seabird monitoring and research activities, have the potential to cause Pacific harbor seals hauled out on Boulder, Lone, and Flapjack Islands, and Geikie Rock to flush into the surrounding water or to cause a short-term behavioral disturbance for marine mammals.

We expect that acoustic and visual stimuli resulting from the proposed activities has the potential to harass marine mammals. We also expect that these disturbances would be temporary and result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of harbor seals.

We included a summary and discussion of the ways that the types of stressors associated with Glacier Bay NP's specified activities (*i.e.,* visual and acoustic disturbance) have the potential to impact marine mammals in the notice of proposed authorization (80 FR 18359, April 6, 2015).

Vessel Strike: The potential for striking marine mammals is a concern with vessel traffic. However, it is highly unlikely that the use of small, slow-moving kayaks or boats to access the research areas would result in injury, serious injury, or mortality to any marine mammal. Typically, the reasons for vessel strikes are fast transit speeds, lack of maneuverability, or not seeing the animal because the boat is so large. Glacier Bay NP's researchers will access areas at slow transit speeds in easily maneuverable kayaks or small boats negating any chance of an accidental strike.

Rookeries: No monitoring or research activities would occur on pinniped rookeries and breeding animals are concentrated in areas where researchers would not visit. Therefore, we do not expect mother and pup separation or crushing of pups during flushing.

Anticipated Effects on Marine Mammal Habitat

We considered these impacts in detail in the notice for the proposed authorization (80 FR 18359, April 6, 2015). Briefly, we do not anticipate that the proposed research would result in any temporary or permanent effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (*i.e.,* fish and invertebrates). While NMFS anticipates that the specified activity may result in marine mammals avoiding certain areas due to motorboat operations or human presence, this impact to habitat is temporary and reversible. NMFS considered these as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice. Based on the preceding discussion, NMFS does not anticipate that the proposed activity would have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth 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). Applications for incidental take authorizations must include the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact on the affected species or stock and their habitat 50 CFR 216.104(a)(11).

The Glacier Bay NP has reviewed the following source documents and has incorporated a suite of proposed mitigation measures into their project description.

(1) Recommended best practices in Womble *et al.* (2013); Richardson *et al.* (1995); Pierson *et al.* (1998); and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities Glacier Bay NP and/or its designees has proposed to implement the following mitigation measures for marine mammals:

- Perform pre-survey monitoring before deciding to access a study site;
- Avoid accessing a site based on a pre-determined threshold number of animals present; sites used by pinnipeds for pupping; or sites used by Steller sea lions;
- Perform controlled and slow ingress to the study site to prevent a stampede and select a pathway of approach to minimize the number of marine mammals harassed;
- Monitor for offshore predators at study sites. Avoid approaching the study site if killer whales (*Orcinus orca*) are present. If Glacier Bay NP and/or its designees see predators in the area, they must not disturb the pinnipeds until the area is free of predators.
- Maintain a quiet research atmosphere in the visual presence of pinnipeds.

Pre-Survey Monitoring: Prior to deciding to land onshore to conduct the study, the researchers would use high-powered image stabilizing binoculars from the watercraft to document the number, species, and location of hauled out marine mammals at each island. The vessels would maintain a distance of 328 to 1,640 ft (100 to 500 m) from the shoreline to allow the researchers to conduct pre-survey monitoring. During every visit, the researchers will examine each study site closely using high powered image stabilizing binoculars before approaching at distances of greater than 500 m (1,640 ft) to determine and document the number, species, and location of hauled out marine mammals.

Site Avoidance: Researchers would decide whether or not to approach the island based on the species present, number of individuals, and the presence of pups. If there are high numbers (more than 25) harbor seals hauled out (with or without young pups present), any time pups are present, or any time that Steller sea lions are present, the researchers will not approach the island and will not conduct gull monitoring research.

Controlled Landings: The researchers would determine whether to approach the island based on the number and type of animals present. If the island has 25 or fewer individuals without pups, the researchers would approach the island by motorboat at a speed of approximately 2 to 3 knots (2.3 to 3.4 mph). This would provide enough time for any marine mammals present to slowly enter the water without panic or stampede. The researchers would also select a pathway of approach farthest from the hauled out harbor seals to minimize disturbance.

Minimize Predator Interactions: If the researchers visually observe marine predators (*i.e.* killer whales) present in the vicinity of hauled out marine mammals, the researchers would not approach the study site.

Noise Reduction Protocols: While onshore at study sites, the researchers would remain vigilant for hauled out marine mammals. If marine mammals are present, the researchers would move slowly and use quiet voices to minimize disturbance to the animals present.

Mitigation Conclusions

NMFS has carefully evaluated Glacier Bay NP'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 motorboat operations or visual presence 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 exposed to motorboat operations or visual presence 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 motorboat operations or visual presence 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 Glacier Bay NP's proposed measures, NMFS has 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 ITA 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. Glacier Bay NP submitted a marine mammal monitoring plan in section 13 of their Authorization application. NMFS or the Glacier Bay NP has not modified or supplemented 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 our understanding of the likely occurrence of marine mammal species in the vicinity of the action, (*i.e.,* presence, abundance, distribution, and/or density of species).

2. An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammal species to any of the potential stressor(s) associated with the action (*e.g.,* sound or visual stimuli), through better understanding of one or more of the following: The action itself and its environment (*e.g.,* sound source characterization, propagation, and ambient noise levels); the affected species (*e.g.,* life history or dive pattern); the likely co-occurrence of marine mammal species with the action (in whole or part) associated with specific adverse effects; and/or the likely biological or behavioral context of exposure to the stressor for the marine mammal (*e.g.,* age class of exposed animals or known pupping, calving or feeding areas).

3. An increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.,* at what distance or received level).

4. An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: The long-term fitness and survival of an individual; or the population, species, or stock (*e.g.* through effects on annual rates of recruitment or survival).

5. An increase in our understanding of how the activity affects marine mammal habitat, such as through effects on prey sources or acoustic habitat (*e.g.,* through characterization of longer-term contributions of multiple sound sources to rising ambient noise levels and assessment of the potential chronic effects on marine mammals).

6. An increase in understanding of the impacts of the activity on marine mammals in combination with the impacts of other anthropogenic activities or natural factors occurring in the region.

7. An increase in our understanding of the effectiveness of mitigation and monitoring measures.

8. An increase in the probability of detecting marine mammals (through improved technology or methodology), both specifically within the safety zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals.

As part of its Authorization application, Glacier Bay NP proposes to sponsor marine mammal monitoring during the project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the MMPA.

The Glacier Bay NP researchers will monitor the area for pinnipeds during all research activities. Monitoring activities will consist of conducting and recording observations on pinnipeds within the vicinity of the proposed research areas. The monitoring notes would provide dates and location of the researcher's activities and the number and type of species present. The researchers would document the behavioral state of animals present, and any apparent disturbance reactions or lack thereof.

Glacier Bay NP can add to the knowledge of pinnipeds in the proposed action area by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

If at any time injury, serious injury, or mortality of the species for which take is authorized should occur, or if take of any kind of any other marine mammal occurs, and such action may be a result of the proposed land survey, Glacier Bay NP would suspend research and monitoring activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

Encouraging and Coordinating Research

Glacier Bay NP actively monitors harbor seals at breeding and molting haul out locations to assess trends over time. This monitoring program involves collaborations with biologists from the Alaska Department of Fish and Game, and the National Marine Mammal Laboratory. Glacier Bay NP will continue these collaborations and encourage continued or renewed monitoring of marine mammal species. Additionally, they would report vessel-based counts of marine mammals, branded, or injured animals, and all observed disturbances to the appropriate state and federal agencies.

Reporting

Glacier Bay NP will submit a draft monitoring report to us no later than 90 days after the expiration of the Incidental Harassment Authorization, if we issue it. The report will describe the operations conducted and sightings of marine mammals near the proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will provide:

1. A summary and table of the dates, times, and weather during all research activities.

2. Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities. Report the numbers of disturbances, by species and age, according to a three-point scale of intensity including: (1) Head orientation in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, or changing from a lying to a sitting position and/or slight movement of less than 1 meter; ''alert''; (2) Movements in response to or away from disturbance, typically over short distances (1–3 meters) and including dramatic changes in direction or speed of locomotion for animals already in motion; ''movement''; and (3) All flushes to the water as well as lengthier retreats (>3 meters); ''flight''.

3. An estimate of the number (by species) of marine mammals exposed to acoustic or visual stimuli associated with the research activities.

4. A description of the implementation and effectiveness of the

monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (*e.g.,* vessel-strike, stampede, etc.), Glacier Bay NP shall immediately cease the specified activities and immediately report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and the Alaska Regional Stranding Coordinator at (907) 586–7248. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including water depth, if applicable);
- 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).

Glacier Bay NP shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. We will work with Glacier Bay to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Glacier Bay NP may not resume their activities until notified by us via letter, email, or telephone.

In the event that Glacier Bay NP discovers an injured or dead marine mammal, and the lead researcher 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), Glacier Bay NP will immediately report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and the Alaska Regional Stranding Coordinator at (907) 586–7248. The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We will work with Glacier Bay NP to determine whether modifications in the activities are appropriate.

In the event that Glacier Bay NP 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), Glacier Bay will report the incident to the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and the Alaska Regional Stranding Coordinator at (907) 586–7248 within 24 hours of the discovery. Glacier Bay NP researchers will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us. Glacier Bay NP can continue their research activities.

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].

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. NMFS expects that the proposed mitigation and monitoring measures would minimize the possibility of injurious or lethal takes. NMFS considers the potential for take by injury, serious injury, or mortality as remote. NMFS expects that the presence of Glacier Bay NP personnel could disturb animals hauled out and that the animals may alter their behavior or attempt to move away from the researchers.

As discussed earlier, NMFS considers an animal to have been harassed if it moved greater than 1 m (3.3 ft) in response to the surveyors' presence or if the animal was already moving and changed direction and/or speed, or if the animal flushed into the water. NMFS does not consider animals that became alert without such movements as harassed.

Based on pinniped survey counts conducted by Glacier Bay NP (*e.g.,* Mathews & Pendleton, 2006; Womble *et al.,* 2010), NMFS estimates that the research activities could potentially affect by Level B behavioral harassment 500 harbor seals over the course of the Authorization. This estimate represents 9.9 percent of the Glacier Bay/Icy Strait stock of harbor seals and accounts for a maximum disturbance of 25 harbor seals each per visit at Boulder, Lone, and Flapjack Islands, and Geikie Rock, Alaska over a maximum level of five visits.

Harbor seals tend to haul out in small numbers (on average, less than 50 animals) at most sites with the exception of Flapjack Island (Womble, Pers. Comm.). Animals on Flapjack Boulder Islands generally haul out on the south side of the Islands and are not located near the research sites located on the northern side of the Islands. Aerial survey maximum counts show that harbor seals sometimes haul out in large numbers at all four locations (see Table 2 in Glacier Bays NP's application), and sometimes individuals and mother/pup pairs occupy different terrestrial locations than the main haulout (J. Womble, personal observation).

Considering the conservation status for the Western stock of the Steller sea lion, the Glacier Bay NP researchers would not conduct ground-based or vessel-based surveys if they observe Steller sea lions before accessing Boulder, Lone, and Flapjack Islands, and Geikie Rock. Thus, NMFS expects no takes to occur for this species during the proposed activities.

NMFS does not propose to authorize any injury, serious injury, or mortality. NMFS expect all potential takes to fall under the category of Level B harassment only.

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. An estimate of the number of Level B harassment 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 considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as

the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Although Glacier Bay NP's survey activities may disturb harbor seals hauled out at the survey sites, NMFS expects those impacts to occur to a small, localized group of animals for a limited duration (*e.g.,* 30 minutes to two hours each visit). Pinnipeds would likely become alert or, at most, flush into the water in reaction to the presence of Glacier Bay NP personnel during the proposed activities. Disturbance will be limited to a short duration, allowing the animals to reoccupy the island within a short amount of time. Thus, the proposed action is unlikely to result in long-term impacts such as permanent abandonment of the haul-out.

For reasons stated previously in this document and based on the following factors, Glacier Bay NP's specified activities are not likely to cause long-term behavioral disturbance, injury, serious injury, or death. These reasons include:

1. The effects of the research activities would be limited to short-term responses and temporary behavioral changes due to the short and sporadic duration of the research activities. Minor and brief responses are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

2. The availability of alternate areas for pinnipeds to avoid the resultant disturbances from the research operations. Anecdotal reports from previous Glacier Bay NP activities have shown that the pinnipeds returned to the various sites and did not permanently abandon haul-out sites after Glacier Bay NP conducted their research activities.

3. There is no potential for large-scale movements leading to injury, serious injury, or mortality because the researchers would delay ingress into the landing areas only after the pinnipeds have slowly entered the water.

4. Glacier Bay NP will limit access to Boulder, Lone, and Flapjack Islands, and Geikie Rock when there are high numbers (more than 25) harbor seals hauled out (with or without young pups present), any time pups are present, or any time that Steller sea lions are present, the researchers will not approach the island and will not conduct gull monitoring research.

NMFS does not anticipate that any injuries, serious injuries, or mortalities would occur as a result of Glacier Bay NP's proposed activities with the mitigation and related monitoring, and NMFS does not propose to authorize injury, serious injury, or mortality at this time. In addition, the research activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat.

Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section in this notice), we do not expect the activity to impact annual rates of recruitment or survival for any affected species or stock.

In summary, NMFS anticipates that impacts to hauled-out harbor seals during Glacier Bay NP's research activities would be behavioral harassment of limited duration (*i.e.,* up to two hours per visit) and limited intensity (*i.e.,* temporary flushing at most). NMFS does not expect stampeding, and therefore injury or mortality, to occur (see ''Mitigation'' for more details). Based on the analysis contained 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 the total marine mammal take from Glacier Bay's proposed research activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that Glacier Bay NP's activities could potentially affect, by Level B harassment only, one species of marine mammal under our jurisdiction. For harbor seals, this estimate is small (9.9 percent) relative to the population size and we have provided the percentage of the harbor seal's regional population estimate that the activities may take by Level B harassment in this notice.

Based on the analysis contained in this notice of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that Glacier Bay NP's proposed activities would take small numbers of marine mammals relative to the populations of the affected species or stocks.

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. Glacier Bay National Park prohibits subsistence harvest of harbor seals within the Park (Catton, 1995).

Endangered Species Act (ESA)

NMFS does not expect that Glacier Bay NP's proposed research activities (which includes mitigation measures to avoid harassment of Steller sea lions) would affect any species listed under the ESA. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In 2014, NMFS prepared an Environmental Assessment (EA) analyzing the potential effects to the human environment from NMFS' issuance of a Authorization to Glacier Bay NP for their seabird research activities.

In September 2014, NMFS issued a Finding of No Significant Impact (FONSI) on the issuance of an Authorization for Glacier Bay NP's research activities in accordance with section 6.01 of the NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). Glacier Bay NP's proposed activities and impacts for 2015 are within the scope of the 2014 EA and FONSI. NMFS provided relevant environmental information to the public through a previous notice for the proposed Authorization (80 FR 18359, April 6, 2015) and considered public comments received in response prior to finalizing the 2014 EA and deciding whether or not to issue a Finding of No Significant Impact (FONSI).

NMFS has reviewed the 2014 EA and determined that there are no new direct, indirect, or cumulative impacts to the human and natural environment associated with the Authorization requiring evaluation in a supplemental EA and NMFS, therefore, reaffirms the 2014 FONSI. NMFS' EA and FONSI for this activity are available upon request (see **ADDRESSES**).

Authorization

As a result of these determinations, we have issued an Incidental Harassment Authorization to Glacier Bay National Park for conducting seabird research May 15, 2015 through September 30, 2015, provided they incorporate the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: May 12, 2015.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–11903 Filed 5–15–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council's) Cooperative Research Committee will hold a public meeting.

DATES: The meeting will be held on Tuesday, June 2, 2015, from 9:30 a.m. to 11:30 a.m., via internet webinar.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site, *www.mafmc.org* will have details on the proposed agenda, webinar access, and briefing materials.

SUPPLEMENTARY INFORMATION: In August 2014, the Council voted to suspend the Research Set-Aside (RSA) program for 2015 in order to address a range of issues, including abuse of the program and inconsistencies in the quality and usefulness of RSA-funded research. During this period of suspension, staff is working with the RSA Committee and Council to identify potential cooperative research approaches that will enable the Council to achieve these goals more effectively.

During this meeting the Cooperative Research Committee will discuss a revised action plan and specific next steps for the ongoing review and restructuring of the Council's involvement in cooperative research. The Committee's recommendations will be reviewed by the full Council at its meeting on June 8–11, in Virginia Beach, VA.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Webinar and phone connection information, a detailed agenda, and any briefing materials will be posted at *www.mafmc.org* prior to the meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 13, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–11953 Filed 5–15–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD776

Endangered Species; File No. 19281

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Dr. Isaac Wirgin, New York University School of Medicine, Department of Environmental Medicine, 57 Old Forge Road, Tuxedo, NY 10987, has applied in due form for a permit to take early life stages (ELS) of endangered, captive shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before June 17, 2015.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 19281 from the list of available applications.

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

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

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

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Rosa L. González, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

In directed research with shortnose sturgeon ELS, researchers propose to define the toxic concentrations of the industrial contaminants polychlorinated biphenyl (PCBs) and Dioxin (2,3,7,8–TCDD). Twenty-thousand fertilized embryos of shortnose sturgeon would be imported annually from a Canadian captive source and exposed (2 to 3-day post-fertilization) to graded doses of the above contaminants. The laboratory tests would be run both singly and in combination with 10 different temperatures or varying levels of dissolved oxygen, representing environmental stresses. Surviving progeny would be euthanized after tests are completed each year. The permit would be valid for five years from issuance date.

Dated: May 12, 2015.

Julia Harrison,

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

[FR Doc. 2015–11901 Filed 5–15–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, June 4, 2015 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Hilton Garden Inn, 1 Thurber Street, Warwick, RI 02886; phone: (401) 734–9600; fax: (401) 734–9700.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are:

The Committee plans to discuss, Framework Adjustment 55/Groundfish Specifications, this action would set specifications for all stocks in the Northeast Multispecies (Groundfish) Fishery Management Plan (FMP) for Fishing Year 2016 through Fishing Year 2018. They will also review the At-Sea Monitoring Framework Adjustment. They will review work of the Groundfish Plan Development Team and develop potential modifications to at-sea monitoring requirements in the groundfish sector program. They will provide a brief update on Amendment 18 progress, (fleet diversity and accumulation limits). Additionally, the committee will receive an update on the Monkfish Framework 9/Northeast Multispecies Framework 54. This joint action would modify Northeast Multispecies regulations to allow the declaration of a Northeast Multispecies Day-At-Sea while at sea and the reduction in minimum standup gillnet mesh size in order to target dogfish. They will also discuss other business as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 13, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–11950 Filed 5–15–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings, June 1–9, 2015.

DATES: The Council will begin its plenary session at 8 a.m. on Wednesday, June 3, continuing through Tuesday, June 9, 2015. The Scientific Statistical Committee (SSC) will begin at 8 a.m. on Monday, June 1 and continue through Wednesday, June 3, 2015. The Council's Advisory Panel (AP) will begin at 8 a.m. on Tuesday, June 2, and continue through Saturday, June 6, 2015. All meetings are open to the public, except executive sessions. The Council's Legislative Committee will meet Tuesday, June 2 at the Westmark Hotel, 330 Seward Street, Founders Room, Sitka, AK 99835, from 1 p.m. to 5 p.m.

ADDRESSES: All meetings except for the Legislative Committee meeting will be held at the Centennial Hall, 330 Harbor Drive, Sitka, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Executive Director's Report (including Draft National Standard 1 (NS1) comments/legislative updates, Fisheries Forum Information Network (FFIN))
   NMFS Management Report
   ADF&G Report
   NOAA Enforcement Report
   U.S. Coast Guard Report
   U.S. FWS Report
   Protected Species Report
2. *BSAI Crab:* Plan team report; Overfishing Levels/Acceptable Biological Catch (OFL/ABC) for 3 stocks
3. Final Action—Bering Sea Halibut Prohibited Species Catch (PSC)
4. Review Observer Program Supplemental Environmental Assessment (EA)
5. Review Observer Program Annual Report
6. Review Observer Advisory Committee (OAC) report
7. Electronic Monitoring (EM) Workgroup report
8. Observer coverage on BSAI trawl catcher vessels (CVs): Discuss alternatives
9. Final Action on Observer coverage on small Catcher Processors (CPs)
10. Determine priorities—Research Priorities
11. Initial review—Adak crab offload (T)
12. Pacific cod modeling report (SSC only)
13. Staff Tasking

The SSC agenda will include the following issues:

1. BSAI Crab
2. Halibut PSC
3. Observer Issues
4. Review NS Guidelines
5. Research Priorities
6. Pacific cod modeling report
7. Adak crab offload

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Councils primary peer review panel for scientific information as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information

Quality Act, including the OMB Peer Review guidelines.

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org.* Background documents, reports, and analyses for review are posted on the Council Web site in advance of the meeting. The names and organizational affiliations of SSC members are also posted on the Web site.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: May 12, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–11865 Filed 5–15–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its American Samoa Archipelago Fishery Ecosystem Plan (FEP) Advisory Panel (AP) to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The American Samoa Archipelago FEP AP will meet on June 1, 2015, between 4:30 p.m. and 6:30 p.m. All times listed are local island times. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The American Samoa Archipelago FEP AP will meet at the Toa Conference Room at the Toa Bar & Grill in Nu'uli, Tutuila, American Samoa.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: Public comment periods will be provided in the agenda. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the American Samoa Archipelago FEP AP Meeting

4:30 p.m.–6:30 p.m., Monday, June 1, 2015

1. Welcome and Introductions
2. Review and Approval of the Agenda
3. Issues to be discussed at 163rd Council Meeting

A. Upcoming Council Action Items
i. Cooperative Research Priorities
ii. Five-year Research Priorities
B. American Samoa FEP Community Activities

4. American Samoa Archipelago FEP Issues

A. Report of the Subpanels
i. Island Fisheries Subpanel
ii. Pelagic Fisheries Subpanel
iii. Ecosystems and Habitat Subpanel
iv. Indigenous Fishing Rights Subpanel
B. Other Issues

5. Public Comment
6. Discussion and Recommendations
7. Other Business

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 12, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–11866 Filed 5–15–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Joint Ecosystem Based Fishery Management (EBFM) and Herring Committees to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, June 2, 2015 at 9 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Holiday Inn, 300 Woodbury Avenue, Portsmouth, NH 03801; telephone: (603) 431–8000; fax: (603) 501–3733.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committees plan to review and discuss scientific advice developed by the EBFM Plan Development Team (PDT) on Atlantic herring control rules considering its role in the ecosystem and as a forage species. Related input will also be provided by the Scientific and Statistical Committee (SSC). The Joint Committee may develop recommendations on how to apply this advice for Amendment 8 to the Herring FMP. They will also be reviewing Amendment 8 scoping comments and discuss Amendment 8 goals and objectives; develop further guidance and related recommendations. The committees will also review and discuss results from the Atlantic herring operational assessment, including comments/recommendations from the May 20, 2015 SSC meeting; develop recommendations. Additionally, the Herring Committee will convene a closed session to review Advisory Panel applications and nominate individuals to fill open seats on the Herring Advisory Panel. The committee will discuss other business as necessary.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been

notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 13, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–11949 Filed 5–15–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The SAFMC will hold a meeting of its Scientific and Statistical Committee (SSC) to review stock projections for blueline tilefish. See **SUPPLEMENTARY INFORMATION.**

DATES: The SSC meeting will be held via webinar on Wednesday, June 3, 2015, from 1 p.m. to 3 p.m.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact John Carmichael at the SAFMC (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of the webinar.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: John Carmichael; 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *john.carmichael@safmc.net.*

SUPPLEMENTARY INFORMATION: This meeting is held to discuss yield and stock status projections for blueline tilefish. This SSC reviewed the SEDAR 32 blueline tilefish stock assessment in October 2013, and considered revised projections in April 2014. The Council has directed the SSC to review the most recent stock projections and consider if they still provide an adequate basis to support the fishery management program.

Items to be addressed during this meeting.

Blueline Tilefish Stock Projections

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: May 13, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–11951 Filed 5–15–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will convene a meeting of the Risk of Overfishing (denoted by P*) Working Group (P* WG) for the Main Hawaiian Island Deep 7 Bottomfish Fishery. The P* WG will finalize the scores for the different P* dimensions and criteria, from the last working group meeting and recommend an appropriate risk of overfishing levels. This will be the basis for the specification of Acceptable Biological Catch (ABC) levels for the Scientific and Statistical Committee (SSC) to consider.

DATES: The P* WG meeting will be on June 4, 2015. For specific times and agendas, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The P* WG meeting will be held at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: Public comment periods will be provided. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the P* WG Meeting

June 4, 2015—1 p.m.–5 p.m.

1. Introductions
2. Recap of previous meeting
3. Review of the P* Dimensions and Criteria
   a. Assessment information
   b. Uncertainty characterization
   c. Stock status
   d. Productivity and susceptibility
4. Revisit Productivity and Susceptibility scores
5. Finalizing the P* scores
6. Scoping discussion on changes to the P* dimensions and criteria
7. General Discussion
8. Public comment
9. Summary of scores and P* recommendations

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 13, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–11954 Filed 5–15–15; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

RIN 3038–AE24

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74936; File No. S7–16–11]

RIN 3235–AK65

Forward Contracts With Embedded Volumetric Optionality

AGENCY: Commodity Futures Trading Commission; Securities and Exchange Commission.

ACTION: Final interpretation.

SUMMARY: In accordance with section 712(d)(4) of the Dodd-Frank Wall Street

Reform and Consumer Protection Act (the ''Dodd-Frank Act''), the Commodity Futures Trading Commission (the ''CFTC'') and the Securities and Exchange Commission (''SEC''), after consultation with the Board of Governors of the Federal Reserve System (''Board of Governors''), are jointly issuing the CFTC's clarification of its interpretation concerning forward contracts with embedded volumetric optionality.

DATES: This interpretation is effective on May 18, 2015.

FOR FURTHER INFORMATION CONTACT: CFTC: Elise Pallais, Counsel, (202) 418–5577, *epallais@cftc.gov;* Mark Fajfar, Assistant General Counsel, (202) 418–6636, *mfajfar@cftc.gov,* Office of the General Counsel, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581. SEC: Carol McGee, Assistant Director, (202) 551–5870, *mcgeec@sec.gov,* Office of Derivatives Policy, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

In *Further Definition of ''Swap,'' Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping* (the ''Products Release''), the CFTC provided an interpretation, in response to requests from commenters, with respect to forward contracts that provide for variations in delivery amount (*i.e.,* that contain ''embedded volumetric optionality'').[1] Specifically, the CFTC identified when an agreement, contract, or transaction would fall within the forward contract exclusion from the ''swap'' and ''future delivery'' definitions in the Commodity Exchange Act (the ''CEA'')[2] notwithstanding that it contains embedded volumetric optionality.[3] In providing its interpretation, the CFTC was guided by and sought to reconcile agency precedent regarding forward contracts containing embedded options[4] with the statutory definition of ''swap'' in section 1a(47) of the CEA, which provides, among other things, that commodity options are swaps, even if physically settled.[5]

In response to requests from market participants,[6] the CFTC proposed in November 2014 to clarify its interpretation of when an agreement, contract, or transaction with embedded volumetric optionality would be considered a forward contract.[7] In particular, the CFTC proposed to (a) modify the fourth and fifth elements of its interpretation to clarify that the interpretation applies to embedded volumetric optionality in the form of both puts and calls[8] and (b) modify the seventh element to clarify that the embedded volumetric optionality must be primarily intended, at the time the parties enter into the agreement, contract, or transaction, to address physical factors or regulatory requirements that reasonably influence demand for, or supply of, the nonfinancial commodity.[9] The CFTC requested comment on all aspects of its proposal.[10]

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[1] *See* 77 FR 48207, 48238–42 (Aug. 13, 2012). As described in the Products Release, the interpretation included the following seven elements:

1. The embedded optionality does not undermine the overall nature of the agreement, contract, or transaction as a forward contract;

2. The predominant feature of the agreement, contract, or transaction is actual delivery;

3. The embedded optionality cannot be severed and marketed separately from the overall agreement, contract, or transaction in which it is embedded;

4. The seller of a nonfinancial commodity underlying the agreement, contract, or transaction with embedded volumetric optionality intends, at the time it enters into the agreement, contract, or transaction to deliver the underlying nonfinancial commodity if the optionality is exercised;

5. The buyer of a nonfinancial commodity underlying the agreement, contract or transaction with embedded volumetric optionality intends, at the time it enters into the agreement, contract, or transaction, to take delivery of the underlying nonfinancial commodity if it exercises the embedded volumetric optionality;

6. Both parties are commercial parties; and

7. The exercise or non-exercise of the embedded volumetric optionality is based primarily on physical factors, or regulatory requirements, that are outside the control of the parties and are influencing demand for, or supply of, the nonfinancial commodity.

[2] *See* 7 U.S.C. 1a(47)(B)(ii) (excluding from the definition of ''swap'' ''*any sale* of a nonfinancial commodity or security for *deferred shipment or delivery,* so long as the transaction is intended to be physically settled''); 1a(27) (excluding from the definition of ''future delivery'' ''*any sale* of any cash commodity for *deferred shipment or delivery*'') (emphasis added).

[3] *See* 77 FR at 48238–42 & n.335. As explained in the Products Release, the CFTC interprets the exclusions in CEA sections 1a(47)(B)(ii) and 1a(27) as coextensive and thus requiring a consistent interpretation. *See id.* at 48227–8. *See also id.* at 48227–36 (discussing the CFTC's interpretation regarding the forward contract exclusion for nonfinancial commodities).

[4] *See id.* at 48237–39 (citing *In re Wright,* CFTC Docket No. 97–02, 2010 WL 4388247 (CFTC Oct. 25, 2010), and *Characteristics Distinguishing Cash and Forward Contracts and ''Trade'' Options,* 50 FR 39656 (Sept. 30, 1985) (''1985 CFTC OGC Interpretation'')).

[5] *See id.* at 48236–37; 7 U.S.C. 1a(47)(A)(i) (defining ''swap'' to include ''[an] option of any kind that is for the purchase or sale, or based on the value, of 1 or more * * * commodities * * *''). CEA section 1a(47)(A)(i) does not differentiate between financially- and physically-settled options. Certain physically-settled options, termed ''trade options,'' are nevertheless exempt from most requirements applicable to swaps. *See* 17 CFR 32.3. Additionally, the CFTC is proposing to amend its trade option exemption to further reduce the reporting and recordkeeping requirements applicable to certain commercial end users. *See Trade Options,* 80 FR 26200 (May 7, 2015).

[6] The Products Release included a request for comment on the CFTC's interpretation regarding forward contracts with embedded volumetric optionality. *See* 77 FR at 48241–42. CFTC staff also solicited comments in connection with a public roundtable on issues concerning end users and the Dodd-Frank Act. These comments are available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1256* and *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1485,* respectively. In general, commenters asserted that uncertainty with regard to the CFTC's interpretation, particularly the seventh element, has led to confusion over whether to characterize certain transactions as excluded forward contracts with embedded volumetric optionality or regulated trade options.

[7] *Forward Contracts With Embedded Volumetric Optionality,* 79 FR 69073 (Nov. 20, 2014) (the ''Proposed Interpretation''). Section 712(d)(4) of the Dodd-Frank Act provides that ''[a]ny interpretation of, or guidance by either Commission regarding, a provision of this title, shall be effective only if issued jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission, after consultation with the Board of Governors, if this title requires the Commodity Futures Trading Commission and the Securities and Exchange Commission to issue joint regulations to implement the provision.'' While the Dodd-Frank Act requires this interpretation, which was originally included in the Products Release, to be issued jointly by the CFTC and the SEC, it is an interpretation solely of the CFTC and does not apply to the exclusion from the swap and security-based swap definitions for security forwards or to the distinction between security forwards and security futures products.

[8] *Id.* at 69074.

[9] *Id.* at 69074–76.

[10] *See id.* at 69076. The CFTC also requested comment in response to specific questions relating to its proposal. *Id.* The comment file, which includes 22 unique comments and one (1) ex parte communication, is available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1541.* Commenters include American Gas Association; American Petroleum Institute; American Public Power Association, Edison Electric Institute, Electric Power Supply Association, Large Public Power Council, and National Rural Electric Cooperative Association; Americans for Financial Reform; Barnard, Chris; Better Markets Inc.; Business Council for Sustainable Energy; Coalition for Derivatives End-Users; Coalition of Physical Energy Companies; Cogen Technologies Linden Venture LP; Commercial Energy Working Group and Commodity Markets Council; Dairy Farmers of America; EDF Trading North America LLC; Federal Energy Regulatory Commission staff; Fig, Willem; International Energy Credit Association; International Swaps and Derivatives Association Inc.; National Association of Manufacturers; National Corn Growers Association and Natural Gas Supply Association; National Energy Marketers Association; Public Citizen; and Southern Company Services Inc., acting on behalf of and as agent for Alabama Power Co., Georgia Power Co., Gulf Power Co., Mississippi Power Co., and Southern Power Co. None of the commenters requested any revisions to SEC rules or regulations (or interpretations thereof), but rather addressed issues relating solely to the CFTC's interpretation.

II. Overview

After a careful review of the comments received, the CFTC has determined to finalize its interpretation as proposed with some additional clarifications. Accordingly, an agreement, contract, or transaction falls within the forward exclusion from the swap and future delivery definitions, notwithstanding that it contains embedded volumetric optionality, when:

1. The embedded optionality does not undermine the overall nature of the agreement, contract, or transaction as a forward contract;

2. The predominant feature of the agreement, contract, or transaction is actual delivery;

3. The embedded optionality cannot be severed and marketed separately from the overall agreement, contract, or transaction in which it is embedded;

4. The seller of a nonfinancial commodity underlying the agreement, contract, or transaction with embedded volumetric optionality intends, at the time it enters into the agreement, contract, or transaction to deliver the underlying nonfinancial commodity if the embedded volumetric optionality is exercised;

5. The buyer of a nonfinancial commodity underlying the agreement, contract or transaction with embedded volumetric optionality intends, at the time it enters into the agreement, contract, or transaction, to take delivery of the underlying nonfinancial commodity if the embedded volumetric optionality is exercised;

6. Both parties are commercial parties; and

7. The embedded volumetric optionality is primarily intended, at the time that the parties enter into the agreement, contract, or transaction, to address physical factors or regulatory requirements that reasonably influence demand for, or supply of, the nonfinancial commodity.

As stated in the Proposed Interpretation, the first six elements of this interpretation are largely unchanged from the Products Release.[11] Among them, only the fourth and fifth elements have been modified, as proposed, to clarify that the CFTC's interpretation applies to embedded volumetric optionality in the form of both puts and calls.[12] Accordingly, the CFTC's discussion of these six elements in the Products Release remains relevant and applicable.[13] The seventh element of the interpretation is discussed further below.

As a general matter, the CFTC clarifies that its interpretation with respect to forward contracts with embedded volumetric optionality should not be read to alter or expand the historic interpretation of the forward contract exclusion. As the first two elements affirm, the interpretation presupposes the existence of an underlying forward contract, as determined by applying the historic interpretation of the forward contract exclusion.[14] The CFTC's interpretation, as provided herein, merely identifies the circumstances under which volumetric optionality embedded in such a forward contract would not operate to take the contract outside the forward contract exclusion.[15] As explained in the Products Release, the historic interpretation of the forward contract exclusion remains relevant and applicable.[16]

In response to commenters, the CFTC clarifies that the fourth and fifth elements of the interpretation do not preclude bandwidth (a.k.a. ''swing'') contracts, which provide for delivery of a nonfinancial commodity within a certain minimum and maximum range, from falling within the forward contract exclusion from the swap and future delivery definitions.[17] As indicated in the Products Release, the fourth and fifth elements merely require that the intent to make or take delivery (as applicable) required of the underlying forward contract extends to the embedded volumetric optionality, such that both parties to the contract intend to make or take delivery (as applicable) of the nonfinancial commodity under the contract if the embedded volumetric optionality is exercised.[18] The embedded volumetric optionality may therefore operate to increase and/or decrease the quantity delivered under the underlying forward contract and still not take the contract out of the forward exclusion provided that all elements of the CFTC's interpretation, as provided herein, are satisfied.

III. The Seventh Element

As stated in the Proposed Interpretation, the seventh element addresses the primary reason for including embedded volumetric optionality in a forward contract.[19] Embedded volumetric optionality offers commercial parties the flexibility to vary the amount of the nonfinancial commodity delivered during the life of the contract in response to uncertainty in the demand for or supply of the nonfinancial commodity.[20] The seventh element ensures that this purpose, consistent with the historical interpretation of a forward contract,[21] is the primary purpose for including embedded volumetric optionality in the contract. In other words, the embedded volumetric optionality must primarily be intended as a means of assuring a supply source or providing delivery flexibility in the face of uncertainty regarding the quantity of the nonfinancial commodity that may be needed or produced in the future, consistent with the purposes of a forward contract.[22]

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[11] *See* 77 FR at 48238.

[12] As described in the Products Release, the fifth element did not appear to contemplate circumstances where the seller of the nonfinancial commodity might exercise the embedded volumetric optionality. *See* 77 FR at 48238 (''The buyer of a nonfinancial commodity underlying the agreement, contract or transaction with embedded volumetric optionality intends, at the time it enters into the agreement, contract, or transaction, to take delivery of the underlying nonfinancial commodity if *it exercises* the embedded volumetric optionality.'') (emphasis added).

[13] *See* 77 FR at 48238–39.

[14] *See id.* at 48227–36.

[15] The CFTC's interpretation only addresses when a forward contract with embedded volumetric optionality would be excluded from the swap or future delivery definitions in the CEA; it does not address whether a contract would otherwise fall within the swap definition. In other words, a contract that does not meet one or more elements of the CFTC's interpretation may or may not be a swap depending on the characteristics of the contract. *See, e.g., id.* at 48246–52 (discussing application of the swap definition to consumer and commercial agreements).

[16] *See, e.g., id.* at 48228.

[17] *See* Letter from Coalition of Physical Energy Companies (Dec. 22, 2014) at 4; Letter from Commercial Energy Working Group and Commodity Markets Council (Dec. 22, 2014) at 3–4; Letter from EDF Trading North America LLC (''EDFTNA'') (Dec. 22, 2014) at 15–17; Letter from International Energy Credit Association (''IECA'') (Dec. 22, 2014) at 4–5; Letter from International Swaps and Derivatives Association Inc. (Dec. 22, 2014) at 3 (each requesting clarification that the fourth and fifth elements permit both increases and decreases in volume).

[18] *See* 77 FR at 48239 (''The fourth and fifth elements are designed to ensure that both parties intend to make or take delivery (as applicable), subject to the relevant physical factors or regulatory requirements, which may lead the parties to deliver more *or less* than originally intended.'') (emphasis added).

[19] *See* 79 FR at 69074–75.

[20] *See, e.g.,* Letter from the Commodity Markets Council, the National Corn Growers Association, and the Natural Gas Supply Association (''CMC/NCGA/NGA'') (April 17, 2014) at 2 (''Physical end-users need these contracts to address supply input or production output uncertainty associated with the operation of a physical business.''); Letter from the Plains All American Pipeline, L.P. (April 17, 2014) at 2 (''Such contracts provide us with the ability to allow our customers flexibility to increase or decrease the amount of purchase or sale of a commodity in response to prevailing market conditions.'').

[21] *See* 77 FR 48228 (describing a forward contract as a ''commercial merchandising transaction'' in which delivery is delayed for ''commercial convenience or necessity'').

[22] *See* 77 FR at 48228 (''The primary purpose of a forward contract is to transfer ownership of the

Continued

As indicated in the Proposed Interpretation, the focus of the seventh element is the intent of the party with the right to exercise the embedded volumetric optionality at the time of contract initiation.[23] In line with the CFTC's historical interpretation of the forward contract exclusion, as discussed in the Products Release, such intent may be ascertained by the relevant facts and circumstances surrounding the contract, including the parties' course of performance thereunder.[24] Nevertheless, commercial parties may rely on counterparty representations with respect to the intended purpose for embedding volumetric optionality in the contract provided they do not have information that would cause a reasonable person to question the accuracy of the representation. In response to commenters, the CFTC clarifies that commercial parties are not required to conduct due diligence in order to rely on such representations.[25]

The CFTC clarifies that the seventh element's reference to ''physical factors'' should be construed broadly to include any fact or circumstance that could reasonably influence supply of or demand for the nonfinancial commodity under the contract. Such facts and circumstances could include not only environmental factors, such as weather or location, but relevant ''operational considerations'' (*e.g.,* the availability of reliable transportation or technology) and broader social forces, such as changes in demographics or geopolitics.[26] The CFTC further clarifies that the parties' having some influence over such physical factors (*e.g.,* the scheduling of plant maintenance, plans for business expansion) would not be inconsistent with the seventh element, provided that the embedded volumetric optionality is included in the contract at initiation primarily to address potential variability in a party's supply of or demand for the nonfinancial commodity, consistent with the purposes of a forward contract.

The CFTC reiterates, however, that if the embedded volumetric optionality is primarily intended, at contract initiation, to address concerns about price risk (*e.g.,* to protect against increases or decreases in the cash market price), the seventh element would not be satisfied absent an applicable regulatory requirement, including guidance, whether formal or informal, received from a public utility commission or other similar governing body, to obtain or provide the lowest price (*e.g.,* the buyer is an energy company regulated on a cost-of-service basis).[27] The CFTC recognizes that, as commenters have pointed out, price is likely to be a consideration when entering into any contract, including a forward contract.[28] However, to ensure that, as required by the first element, the overall nature of the contract as a forward is not undermined,[29] the embedded volumetric optionality must, as stated above, be primarily intended as a means of securing a supply source in the face of uncertainty (arising from physical factors or regulatory requirements, such as an obligation to ensure system reliability) regarding the volume of the nonfinancial commodity to be needed or produced.[30]

Additionally, as stated in the Proposed Interpretation, the CFTC understands that in certain retail electric market demand-response programs, electric utilities have the right to interrupt or curtail service to a customer to support system reliability.[31] The CFTC clarifies that, given that a key function of an electricity system operator is to ensure grid reliability, demand response agreements, even if not specifically mandated by a system operator, may be properly characterized as the product of regulatory requirements within the meaning of the seventh element.[32]

Finally, in response to requests from commenters, the CFTC clarifies that commercial parties may choose to either rely on their good faith characterization of an existing contract (*e.g.,* as an excluded forward contract with embedded volumetric optionality or an exempt trade option) and or recharacterize it in accordance with this final interpretation.[33]

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commodity and not to transfer solely its price risk.''). *See also* Letter from the CMC/NCGA/NGA (April 17, 2014) at 2 (''[Contracts with volumetric optionality] exist to permit end-users to have agreements in place so that they can effectively and economically manage the purchase or sale of commodities related to their commercial businesses, not as a substitute for a financially settled contract or for speculative purposes.''); Letter from ONEOK, Inc. (July 22, 2011) at 7 (stating that ''[a]lthough the amounts that can be taken on delivery may vary, the primary intent of the contracts is not to provide price protection'').

[23] For example, in choosing whether to obtain additional supply by exercising the embedded volumetric optionality under a given contract or turning to another supply source—whether storage, the spot market, or another forward contract with embedded volumetric optionality—commercial parties would be able to consider a variety of factors, including price, provided that the intended purpose for including the embedded volumetric optionality in the contract at contract initiation was to address physical factors or regulatory requirements influencing the demand for or supply of the commodity. *See also* Letter from EDFTNA (Dec. 22, 2014) at 20 (requesting further clarification that the seventh element only addresses the intent of the party with the right to exercise the embedded volumetric optionality.)

[24] *See* 77 FR 48228 (''In assessing the parties' expectations or intent regarding delivery, the CFTC consistently has applied a 'facts and circumstances' test.''). For example, if one party has an option to settle a contract financially based upon a value change in an underlying cash market, then the contract may be a swap. *See id.* at 48241 n. 370. *See also* Letter from ONEOK, Inc. (July 22, 2011) at 6 (acknowledging that ''[t]he intent of the parties to defer delivery of a varying amount can be ascertained based on objective criteria, such as the pattern of deliveries in relation to variation in weather, customer demand, or other similar factors.'').

[25] *See* Letter from EDFTNA (Dec. 22, 2014) at 22–23 (arguing that requiring counterparties to conduct due diligence in order to ensure that facts suggesting an alternate purpose for the embedded volumetric optionality are not present would be ''infeasible'' and may undercut the utility of the Proposed Interpretation).

[26] As stated in the Products Release, system reliability issues that lead to voluntary supply curtailments would be considered ''physical factors'' within the scope of the seventh element. *See* 77 FR at 48239 n.345.

[27] The CFTC confirms that, as stated in the Proposed Interpretation and in the Products Release, the deliverable quantities allowable under embedded volumetric optionality may be justified by a combination of regulatory requirements and physical factors, such that the quantity provided for by the embedded volumetric optionality may reasonably exceed quantities required by regulation. *See* 77 FR at 48238 n.340.

[28] *See* 77 FR at 48228 (''The primary purpose of a forward contract is to transfer ownership of the commodity and not to transfer *solely* its price risk.'') (emphasis added). *See also* Letter from American Gas Association (''AGA'') (Dec. 22, 2014) at 8–10; Letter from Coalition for Derivatives End-Users (Dec. 22, 2014) at 6; Letter from American Public Power Association, Edison Electric Institute, Electric Power Supply Association, Large Public Power Council, and National Rural Electric Cooperative Association (''Joint Associations'') (Dec. 22, 2014) at 4–5; Letter from Southern Company Services Inc., acting on behalf of and as agent for Alabama Power Co., Georgia Power Co., Gulf Power Co., Mississippi Power Co., and Southern Power Co. (Dec. 22, 2014) at 2–3.

[29] *See* 77 FR at 48227–36.

[30] *See* 1985 CFTC OGC Interpretation, 50 FR at 39658. *But see* supra note 23; Letter from National Corn Growers Association and Natural Gas Supply Association (Dec. 22, 2014) (recognizing that price concerns are acceptable ''if they arise subsequent to execution or are motivated by an applicable regulatory requirement'').

[31] *See* Letter from the National Rural Electric Cooperative Association, the American Public Power Association, the Large Public Power Association, and the Transmission Access Policy Study Group (Oct. 12, 2012) at 9.

[32] The CFTC further clarifies that its interpretations regarding full requirements and output contracts, as provided in the Products Release, remain relevant and unaffected by the discussion herein. *See* 77 FR at 48239–40. Similarly, the CFTC reiterates that, depending on the relevant facts and circumstances, capacity contracts, transmission (or transportation) service agreements, tolling agreements, and peaking supply contracts, as discussed in the Products Release, may qualify as forward contracts with embedded volumetric optionality provided they meet the elements of the CFTC's proposed interpretation. *See* 77 FR 48240.

[33] Letter from AGA (Dec. 22, 2104) at 12, 19 (requesting relief for market participants who reported transactions as trade options that, following adoption of the Proposed Interpretation, they would consider excluded forwards); Letter from EDFTNA (Dec. 22, 2014) at 5–7 (arguing that reassessment of the legal character of an existing

The CFTC believes that these modifications are appropriately measured to clarify the meaning of certain language in the seventh element and should not be construed as a shift in the CFTC's longstanding precedent on the difference between forward contracts and options.

By the Securities and Exchange Commission.

Dated: May 12, 2015.

Brent J. Fields,

Secretary.

Issued in Washington, DC, on May 12, 2015, by the Commodity Futures Trading Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Commodity Futures Trading Commission (CFTC) Appendices to Forward Contracts With Embedded Volumetric Optionality—Commission Voting Summary, Chairman's Statement, and Commissioner's Statement

Appendix 1—Commodity Futures Trading Commission Voting Summary

On this matter, Chairman Massad and Commissioners Wetjen, Bowen, and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Support of CFTC Chairman Timothy G. Massad

I support the staff's recommendations to finalize a proposal we made in November regarding contracts with embedded volumetric optionality—a contractual right to receive more or less of a commodity at the negotiated contract price.

As I said in my statement on the proposal, with reforms as significant as these, it is inevitable that there will be a need for some minor adjustments. And that is what we are doing. The changes we are proposing today help ensure that as we regulate the potential for excessive risks in these markets, we make sure that the commercial businesses—whether they are farmers, ranchers, manufacturers or others—that rely on these markets to hedge routine risks can continue to do so efficiently and effectively.

Specifically, we proposed to clarify when a contract with embedded volumetric optionality will be excluded from being considered a swap. We received a number of comments on this and we have incorporated some of the concerns in the final clarification. Today, following action by the SEC last week, we are posting to the **Federal Register** the final interpretation. By clarifying how these agreements will be treated for regulatory purposes, the interpretation should make it easier for commercial companies to continue to use these types of contracts in their daily operations.

In certain situations, commercial parties are unable to predict at the time a contract is entered into the exact quantities of the commodity that they may need or be able to supply, and the embedded volumetric optionality offers them the flexibility to vary the quantities delivered accordingly. The CFTC put out an interpretation, consisting of seven factors, to provide clarity as to when such contracts would fall within the forward contract exclusion from the swap definition, but some market participants have felt this interpretation, in particular the seventh factor, was hard to apply. In some cases, the two parties would reach different conclusions about the same contract.

Today we are finalizing clarifications to the interpretation that I believe will alleviate this ambiguity and allow contracts with volumetric optionality that truly are intended to address uncertainty with respect to the parties' future production capacity or delivery needs, and not for speculative purposes or as a means to obtain one-way price protection, to fall within the exclusion.

Appendix 3—Concurring Statement of CFTC Commissioner Sharon Y. Bowen

Today we are approving a final interpretation regarding forward contracts with embedded optionality. This interpretation is improved compared to the proposed interpretation and I am voting in favor of it. However, I am concerned that this interpretation does not provide the clarity that may be required.

Staff has done a remarkable job in considering the comments received and drafting this final interpretation and they deserve ample praise for their hard work. Yet, staff, and this Commission, face statutory restrictions regarding the definitions of forwards and options that place limits on the relief available through interpretations of the forward contract exclusion. There is no interpretation, by this Commission or its staff, which can turn an option into a forward.

Given the interpretive questions about the final rule defining ''swap'' and the difficulties in classifying forward contracts with embedded optionality, I think it is important to be clear on what this interpretation can and cannot do—I do not want people to make business decisions based upon a mistaken belief that they have received relief when they have not.

The central issue industry faces is that, in the manufacturing, agriculture and energy sectors, a wide variety of physically-delivered instruments are used to secure companies' commercial needs for a physical commodity. These instruments often contain elements of both a forward contract and a commodity option. These contracts, particularly in the energy sector, are all commonly referred to as physical contracts, and they, according to what I have been told, often receive similar treatment from both a business operations and an accounting standpoint within the entities that use them.

Furthermore, my understanding is that these physical contracts are often handled and accounted for separately from other derivatives, such as futures contracts or cash-settled swaps. Treating some portion of these physical contracts as swaps simply because they may contain some characteristics of commodity options can lead to significant costs and difficulties. For instance, companies may have to reconfigure their business systems to parse transactions where there was, before Dodd Frank, no need to undertake such a reconfiguration.

I have studied this issue closely, meeting with industry and the public and reviewing the comments we have received. In the case of these transactions which are used to address physical commodity needs, I have doubts about whether any public interest is served by requiring manufacturing, agricultural and energy companies to undertake such a burden and reconfigure processes to comply with Commission swap regulations.

The limits on relief through this interpretation flow from the statutory lines drawn between options and forward contracts. Under the CEA, options and forwards are discrete, mutually exclusive categories. Options are subject to the Commission's plenary, exclusive jurisdiction. Forward contracts, on the other hand, are almost entirely excluded from the Commission's jurisdiction. If a contract, or some portion of a contract, meets the definition of an ''option,'' that portion which is an option inherently cannot be a forward contract.

Under the CEA, a critical difference between a physically-delivered option and a forward contract is the nature of the delivery obligation. A forward contract binds both parties to make and take delivery of a commodity at some date in the future. The contract may only be offset through a separate negotiation of the parties. In a physically-settled option contract, only the party offering the option is bound to make or take delivery at the time of contract.

The forward contract exclusion from the swap definition, applies only to a ''[A] sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled.'' The key part of this definition is that it only applies to a ''sale'' of a commodity. A ''sale'' means that one party has agreed to make and the other to take delivery of that commodity.[1]

contract is impractical) Letter from IECA (Dec. 22, 2014) at 3 (arguing that requiring parties to reclassify their existing contracts following adoption of the Proposed Interpretation would be unduly burdensome); Letter from Joint Associations (Dec. 22, 2014) at 11 (requesting that the CFTC allow counterparties to reclassify their transactions following adoption of the Proposed Interpretation).

[1] The phrase, ''so long as the transaction is intended to by physically settled,'' has been interpreted by the Commission to be consistent with its traditional approach to determining whether an instrument is a forward contract. As was stated in the Commission's proposed rule,

The CFTC believes that the forward contract exclusion in the Dodd-Frank Act with respect to nonfinancial commodities should be read consistently with th[e] established, historical understanding that a forward contract is a commercial merchandising transaction.

Many commenters discussed the issue of whether the requirement in the Dodd-Frank Act that a transaction be ''intended to be physically settled'' in order to qualify for the forward exclusion from the swap definition with respect to nonfinancial commodities reflects a change in the standard for determining whether a transaction is a forward

Continued

An option, in contrast, is only the option to undertake such a ''sale'', not the sale itself. The sale occurs only when the option is exercised. The option to buy or sell a commodity at some later point simply is not the same thing as the sale of that commodity itself. The Commission's Office of the General Counsel memorialized this interpretation in 1985:

[T]he [forward] contract must be a binding agreement on both parties to the contract: One must agree to make delivery and the other to take delivery of the commodity. Second, because forward contracts are commercial, merchandizing transactions which result in delivery, the courts and the Commission have looked for evidence of the transactions' use in commerce. Thus, the courts and the Commission have examined whether the parties to the contracts are commercial entities that have the capacity to make or take delivery and whether delivery, in fact, routinely occurs under such contracts

* * * * *

Thus, an option is a contract in which only the grantor is obligated to perform. As a result, the option purchaser has a limited risk from adverse price movements. This characteristic distinguishes an option from a forward contract in which both parties must routinely perform and face the full risk of loss from adverse price changes since one party must make and the other take delivery of the commodity. In contrast, in an option, only the grantor of a call (put) is required to sell (buy) a given quantity of a commodity (or a futures contract on that commodity) on or by a specified date in the future if the option is exercised. ''*Characteristics Distinguishing Cash and Forward Contracts and 'Trade Options*' '', 50 FR 39656–02 (September 30, 1985)

The Commission ratified this interpretation in 1990 in its ''*Statutory Interpretation Concerning Forward Transactions*'', 55 FR 39188–03 (September 25, 1990) (''*Brent Interpretation*'') and again in 2012 its final rule, ''*Further Definition of 'Swap,' 'Security-Based Swap,' and 'Security-Based Swap Agreement'; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* 77 FR 48208, 48227–48235 (August 13, 2012) (''*Products Release*''). In doing so, the Commission explicitly rejected the argument that physically-delivered commodity options could fall within the forward contract exclusion.[2]

The interpretation being promulgated today does not change this, and therein lays my concern regarding this interpretation's limits.

I think much of the confusion regarding the seven-part test has been based upon a failure to recognize the difference between forward and option contracts under the Commodity Exchange Act. The fact that a forward contract element and a commodity option are packaged together does not change the regulatory treatment of the different components. Hybrid or packaged instruments are common throughout the industry. There are hybrid or packaged instruments which may have characteristics of futures contracts and securities, swaps and security-based swaps, futures and forward transactions, and even forward contracts and commodity options. Each portion of the contract might be subject to different regulatory treatment. A security does not become a future, nor does a future become a security simply by virtue of being packaged in the same instrument.

Relevant to the instruments we are discussing today, forward contracts with embedded volumetric optionality, it seems that most of them, as described in the comments, have at least two separate, identifiable contractual obligations, each of which must be considered on their own merits. There is a forward contract element which binds the parties to make and take delivery of a set amount of a commodity. In addition, there is an embedded volumetric optionality element that binds the forward contract offeror to make or take delivery of an additional amount of the commodity if the embedded volumetric optionality is exercised by the forward contract offeree. The latter contractual obligation looks like a classic option.

The difficulty this interpretation faces in providing the relief industry seeks is this: Even though the embedded optionality has the form of an option, can it somehow fit within the forward exclusion? The answer this interpretation gives is, essentially, yes, it can, if it can be demonstrated that, despite the embedded optionality having the form of an option, it is utilized, in practice, as a forward contract. While the seven-prong test and the interpretive guidance around it do not provide an exact roadmap for determining when embedded volumetric optionality included in a forward contract may or may not fall into the option definition, or when embedded volumetric optionality may undermine a forward contract, I think it does provide a good sense of the factors that parties must consider in making those determinations for themselves.

Such a test, however, is necessarily a facts and circumstances test with no bright lines. Ensuring compliance with this interpretation poses a challenge, and, therefore, that is an area where I would like to see greater legal certainty for these contracts.

In closing, I support this final interpretation, but I think industry would benefit from broader relief that provides greater legal certainty. I look forward to continuing to work with my fellow Commissioners and staff to make sure that commercial entities have access to the tools they need to manage the commercial risks of their operations.

[FR Doc. 2015–11946 Filed 5–15–15; 8:45 am]

BILLING CODE 8011–01–p 6351–01–P

contract. Because a forward contract is a commercial merchandising transaction, intent to deliver historically has been an element of the CFTC's analysis of whether a particular contract is a forward contract. In assessing the parties' expectations or intent regarding delivery, the CFTC consistently has applied a ''facts and circumstances'' test. Therefore, the CFTC reads the ''intended to be physically settled'' language in the swap definition with respect to nonfinancial commodities to reflect a directive that intent to deliver a physical commodity be a part of the analysis of whether a given contract is a forward contract or a swap, just as it is a part of the CFTC's analysis of whether a given contract is a forward contract or a futures contract. Proposed Rule on ''*Further Definition of 'Swap,' 'Security-Based Swap,' and 'Security-Based Swap Agreement'; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* 76 FR 29818, 29828 (May 23, 2011) (''*Proposed Products Release*'').

This interpretation was ratified in the final rule, ''*Further Definition of 'Swap,' 'Security-Based Swap,' and 'Security-Based Swap Agreement'; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* 77 FR 48208, 48227–48228 (August 13, 2012) (''*Products Release*'').

[2] *See also, Products Release* at 4236–37.

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2015–0020]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting to renew the approval for an existing information collection titled, ''Mortgage Acts and Practices (Regulation N) 12 CFR 1014.''

DATES: Written comments are encouraged and must be received on or before July 17, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- Electronic: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.
- Hand Delivery/Courier: Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention:

PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Mortgage Acts and Practices (Regulation N) 12 CFR 1014.

OMB Control Number: 3170–0009.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Businesses and other for-profit institutions.

Estimated Number of Respondents: 483.

Estimated Total Annual Burden Hours: 242.

Abstract: Regulation N (12 CFR 1014), prohibits misrepresentations about the terms of mortgage credit products in commercial communications and requires that covered persons keep certain related records for a period of twenty-four (24) months from last dissemination. The information that Regulation N requires covered persons to retain is necessary to ensure efficient and effective law enforcement to address deceptive practices that occur in the mortgage advertising area.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: May 15, 2015.

Ashwin Vasan,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2015–11985 Filed 5–15–15; 8:45 am]

BILLING CODE 4810–AM–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (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 requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed renewal of the AmeriCorps Member Application Form. Applicants will respond to the questions included in this ICR in order to apply to serve as AmeriCorps members.

Copies of the information collection request can be obtained by contacting the office listed in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 17, 2015.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, AmeriCorps State & National; ATTN: Erin Dahlin, Deputy Chief of Program Operations, 1201 New York Avenue NW., Washington, DC 20525.

(2) *By hand delivery or by courier* to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) *Electronically* through *www.regulations.gov.*

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Erin Dahlin, 202–606–6931 or *EDahlin@cns.gov*.

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

Background

This Member Application Form will be used by applicants who are interested in serving as AmeriCorps members. The information requested in the application form makes it possible for programs to select members to serve. Programs also use this form as an example that they customize to develop their own recruitment materials.

Current Action

Changes have been made align form with program and technological needs and resources. The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on July 31, 2015.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Member Application Form.

OMB Number: 3045–0054.

Agency Number: None.

Affected Public: Applicants applying to serve in AmeriCorps.

Total Respondents: 225,000.

Frequency: Ongoing.

Average Time per Response: Averages 1.25 hours.

Estimated Total Burden Hours: 281,250.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

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

Dated: May 12, 2015.

Erin Dahlin,

Deputy Chief of Program Operations.

[FR Doc. 2015–11828 Filed 5–15–15; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Advisory Committee on Arlington National Cemetery (ACANC). The meeting is open to the public. For more information about the Committee, please visit *http://www.arlingtoncemetery.mil/About/Advisory-Committee-on-Arlington-National-Cemetery/Charter*

DATES: The Committee will meet from 9:30 a.m.–3:30 p.m. on Wednesday, June 24, 2015.

ADDRESSES: Women in Military Service for America Memorial, Conference Room, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Curfman; Alternate Designated Federal Officer for the Committee, in writing at Arlington National Cemetery, Arlington, VA 22211, or by email at *brenda.k.curfman.civ@mail.mil,* or by phone at 703–614–0998.

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

Purpose of the Meeting: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the Committee's advice and recommendations.

Proposed Agenda: The Committee will receive a budget overview briefing for various sources of funding for sustainment and construction; briefing on the American Disabilities Act compliance plan for ANC and briefings on the formal process for proposals for additional quotations in the Welcome Center and the naming of streets and paved roads. Additionally, the Committee will receive a brief on the cemetery's horticulture plan and strategy.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Women in Military Service for America is readily accessible to and usable by persons with disabilities. For additional information about public access procedures, contact Ms. Brenda Curfman, the Committee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Committee, in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted to Ms. Brenda Curfman, the Committee's Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Alternate Designated Federal Officer at least seven business days prior to the meeting to be considered by the Committee. The Alternate Designated Federal Officer will review all timely submitted written comments or statements with the Designated Federal Officer and the Committee Chairperson, and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date may not be provided to the Committee until its next meeting. Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the Committee's Alternate Designated Federal Official, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The Alternate Designated Federal Official will log each request, in the order received, and in consultation with the Committee Chair determine whether the subject matter of each comment is relevant to the Committee's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the Alternate Designated Federal Official.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2015–11942 Filed 5–15–15; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2015–HA–0049]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity

of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 17, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Health Services Systems (DHSS) Program Executive Office (PEO), ATTN: CDR Patrick Amersbach, Defense Health Headquarters (DHHQ) 7700 Arlington Boulevard, Falls Church ,VA 22042–2902, or call 703–681–0845.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Centralized Credentials Quality Assurance System (CCQAS); OMB Control Number 0720–TBD.

Needs and Uses: CCQAS v2.9.11 is an automated Tri-Service, Web-based database containing credentialing, privileging, risk management, and adverse actions information on direct healthcare providers in the MHS. CCQAS also allows providers to apply for privileges online. This latter capability allows for a privileging workflow for new providers, for transfers (TDY and PCS), for modification of privileges, and for renewal of privileges and staff reappointment within the system. CCQAS was CAC enforced December 2009 and as part of the Federal Health Care Center, North Chicago, VA PIV users gained access in October 2010. In November 2011, CCQAS was PKI/SSO integrated.

Affected Public: Individuals or Households.

Annual Burden Hours: 80,000.

Number of Respondents: 40,000.

Responses per Respondent: 1.

Average Burden per Response: 2 hours.

Frequency: On occasion.

Currently, CCQAS provides credentialing, privileging, risk-management and adverse actions capabilities which support medical quality assurance activities in the direct care system. CCQAS is fully deployed world-wide and is used by all Services (Army, Navy, Air Force) and Components (Guard, Reserve). CCQAS serves users functioning at the facility (defined by an individual UIC), Service, and DoD levels. Access to CCQAS modules and capabilities within each module is permissions-based, so that users have access tailored to the functions they perform and sensitive information receives maximal protection. Within each module, access control is available to the screen level.

Dated: May 13, 2015.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2015–11971 Filed 5–15–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Uniform Formulary Beneficiary Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce a Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

DATES: Thursday, June 11, 2015, from 9:00 a.m. to 1:00 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Blanche, Alternate DFO, Uniform Formulary Beneficiary Advisory Panel, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101. Telephone: (703) 681–2890. Fax: (703) 681–1940. Email Address: *dha.ncr.health-it.mbx.baprequests@mail.mil.*

SUPPLEMENTARY INFORMATION:

This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (Title 5, United States Code (U.S.C.), Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended).

Purpose of Meeting: The Panel will review and comment on recommendations made to the Director of Defense Health Agency, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

Meeting Agenda

1. Sign-In
2. Welcome and Opening Remarks
3. Public Citizen Comments
4. Scheduled Therapeutic Class Reviews (Comments will follow each agenda item)
   a. Newer Oral Anticoagulants and Warfarin
   b. Hepatitis Antivirals (Hepatitis C)
5. Designated Newly Approved Drugs in Already-Reviewed Classes
6. Pertinent Utilization Management Issues
7. Panel Discussions and Vote

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 Code of Federal Regulations (CFR) 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing-in. All persons must sign-in legibly.

Administrative Work Meeting: Prior to the public meeting, the Panel will conduct an Administrative Work Meeting from 8:00 a.m. to 9:00 a.m. to discuss administrative matters of the Panel. The Administrative Work Meeting will be held at the Naval Heritage Center, 701 Pennsylvania Avenue NW., Washington, DC 20004. Pursuant to 41 CFR 102–3.160, the Administrative Work Meeting will be closed to the public.

Written Statements: Pursuant to 41 CFR 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer

(DFO). The DFO's contact information can be obtained from the General Services Administration's Federal Advisory Committee Act Database at *http://facadatabase.gov/.*

Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than 5 business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all the committee members.

Public Comments: In addition to written statements, the Panel will set aside 1 hour for individuals or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice; but if they still want to address the Panel, then they will be afforded the opportunity to register to address the Panel. The Panel's DFO will have a ''Sign-Up Roster'' available at the Panel meeting for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than 5 minutes to present their comments, and at the end of the 1 hour time period, no further public comments will be accepted. Anyone who signs-up to address the Panel, but is unable to do so due to the time limitation, may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation.

To ensure timeliness of comments for the official record, the Panel encourages that individuals and interested groups consider submitting written statements instead of addressing the Panel.

Dated: May 13, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–11977 Filed 5–15–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2015–0017]

Proposed Collection; Comment Request

AGENCY: Armed Forces Medical Examiner (AFMES), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Armed Forces Repository Specimen Samples for the Identification or Remains (AFRSSIR), a part of the Armed Forces Medical Examiner System (AFMES), announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 17, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Armed Forces Repository of Specimen Samples for the Identification of Remains, Armed Forces Medical Examiner System (AFMES), 115 Purple Heart Drive, Dover AFB, DE, 19902–5051, ATTN: Mr. John Martin, Legal Counsel, AFMES at (302) 346–8634.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Donor Specimen Card, OMB Control Number: 0702–XXXX.

Needs and Uses: The information collected will be used for the identification of human remains. The principal purpose of the information is to identify reference specimen samples that will routinely be stored and not analyzed until needed for remains identification program purposes.

Affected Public: Individuals or Households and Federal Government.

Annual Burden Hours: 62,500.

Number of Respondents: 250,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On Occasion.

Respondents are deploying civilian or contractors and military personnel family members. The principal purpose of the collection is identify reference specimen samples that will be stored and not analyzed until needed for remain identification purposes. The donors at various military collection points and other federal agencies provide a blood sample which is stained on laboratory grade blood stain card (BSC). The identifying information on the blood stain card provided the donor reflects the individual's full name, signature, social security number (SSN), date of birth collection date and branch of service. The BSC is air dried and vacuumed sealed in a poly foil pouch. An adhesive label reflecting the donor information and redacted (SSN) is printed on the label, along with the unique accession number. In the event of the donor's death, the blood sample is scientifically analyzed and a DNA profile is created. This profile is then compared with the post-mortem sample obtained at the autopsy for positive identification.

Dated: May 12, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–11857 Filed 5–15–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Predominantly Black Institutions Competitive Grant Program

AGENCY: Office of Postsecondary Education, Department of Education

ACTION: Notice.

Overview Information:

Predominantly Black Institutions Competitive Grant Program (PBI Program)

Notice inviting applications for new awards for fiscal year (FY) 2015.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.382A.

Dates:

Applications Available: May 18, 2015.

Deadline for Transmittal of Applications: July 2, 2015.

Deadline for Intergovernmental Review: August 31, 2015.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the PBI Program is to strengthen Predominantly Black Institutions (PBIs) to carry out programs in the following areas: science, technology, engineering, or mathematics (STEM); health education; internationalization or globalization; teacher preparation; or improving educational outcomes of African-American males.

Background: We encourage applicants to read carefully the *Selection Criteria* section of this notice. Consistent with the Department's increasing emphasis in recent years on promoting evidence-based practices through our grant competitions, the Secretary will evaluate applications on the extent to which the proposed project is supported by a logic model that meets the evidence standard of ''strong theory'' (as defined in this notice). Resources to assist applicants in creating a logic model can be found here: *http://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf.*

Priorities: This notice contains two competitive preference priorities. These priorities are from the Department's notice of final supplemental priorities and definitions for discretionary grant programs (Supplemental Priorities), published in the **Federal Register** on December 10, 2014 (79 FR 73425).

Competitive Preference Priorities: For FY 2015 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an application up to three additional points for each priority, for a total of up to six additional points, depending on how well the application meets each of these priorities.

These priorities are:

Competitive Preference Priority 1: Increasing Postsecondary Access, Affordability, and Completion (up to 3 points).

Projects that are designed to address one or both of the following:

(a) Reducing the net cost, median student loan debt, and likelihood of student loan default for high-need students who enroll in college, other postsecondary education, or other career and technical education.

(b) Supporting the development and implementation of high-quality online or hybrid credit-bearing and accessible learning opportunities that reduce the cost of higher education, reduce time to degree completion, or allow students to progress at their own pace.

Competitive Preference Priority 2: Improving Teacher Effectiveness and Promoting Equitable Access to Effective Teachers (up to 3 points).

Projects that are designed to increase the number and percentage of effective teachers in lowest-performing schools, schools in rural local educational agencies, or schools with high concentrations of students from low-income families and minority students, through such activities as:

(a) Improving the preparation, recruitment, selection, and early career development of teachers; implementing performance-based certification systems; reforming compensation and advancement systems; and reforming hiring timelines and systems.

(b) Improving the retention of effective teachers through such activities as creating or enhancing opportunities for teachers' professional growth; delivering professional development to teachers that is relevant, effective, and outcome-oriented; reforming compensation and advancement systems; and improving workplace conditions to create opportunities for successful teaching and learning.

Definitions: The following definitions are from the Supplemental Priorities and from 34 CFR 77.1 and apply to the priorities and selection criteria in this notice:

High-minority school means a school as that term is defined by a local educational agency (LEA), which must define the term in a manner consistent with its State's Teacher Equity Plan, as required by section 1111(b)(8)(C) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The applicant must provide the definition(s) of high-minority schools used in its application.

High-need students means students who are at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners.

Logic model (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

Note: In developing logic models, applicants may want to use resources such as the Pacific Education Laboratory's Education Logic Model Application (*www.relpacific.mcrel.org/PERR.html* or *http://files.eric.ed.gov/fulltext/ED544779.pdf)* to help design their logic models.

Lowest-performing schools means—

For a State with an approved request for flexibility under the ESEA, priority schools or Tier I and Tier II schools that have been identified under the School Improvement Grants (SIG) program.

For any other State, Tier I and Tier II schools that have been identified under the SIG program.

Persistently-lowest achieving school means, as determined by the State—

(a)(1) Any Title I school that has been identified for improvement, corrective action, or restructuring under section 1116 of the ESEA and that—

(i) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate, as defined in 34 CFR 200.19(b), that is less than 60 percent over a number of years; and

(2) Any secondary school that is eligible for, but does not receive, Title I funds that—

(i) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate, as defined in 34 CFR 200.19(b), that is less than 60 percent over a number of years.

(b) To identify the lowest-achieving schools, a State must take into account both—

(i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA, in reading/language arts and mathematics combined; and

(ii) The school's lack of progress on those assessments over a number of years in the ''all students'' group.

Priority schools means schools that, based on the most recent data available, have been identified as among the lowest-performing schools in the State. The total number of priority schools in a State must be at least five percent of the Title I schools in the State. A priority school is—

(a) A school among the lowest five percent of Title I schools in the State based on the achievement of the ''all students'' group in terms of proficiency on the statewide assessments that are part of the state educational agency's (SEA's) differentiated recognition, accountability, and support system, combined, and has demonstrated a lack of progress on those assessments over a number of years in the ''all students'' group;

(b) A Title I-participating or Title I-eligible high school with a graduation rate that is less than 60 percent over a number of years; or

(c) A Tier I or Tier II school under the SIG program that is using SIG funds to implement a school intervention model.

Regular high school diploma means the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General Education Development credential, certificate of attendance, or any alternative award.

Rural local educational agency means an LEA that is eligible under the Small Rural School Achievement program or the Rural and Low-Income School program authorized under title VI, part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *www2.ed.gov/nclb/freedom/local/reap.html.*

Strong theory means a rationale for the proposed process, product, strategy, or practice that includes a logic model.

Tier I schools means—

(a) A Title I school that has been identified as in improvement, corrective action, or restructuring under section 1116 of the ESEA and that is identified by the SEA under paragraph (a)(1) of the definition of persistently-lowest achieving school.

(b) An elementary school that is eligible for title I, part A funds that—

(1)(i) Has not made adequate yearly progress for at least two consecutive years; or

(ii) Is in the State's lowest quintile of performance based on proficiency rates on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

(2) Is no higher achieving than the highest-achieving school identified by the SEA under paragraph (a)(1)(i) of the definition of persistently-lowest achieving school.

Tier II schools means—

(a) A secondary school that is eligible for, but does not receive, title I, part A funds and is identified by the SEA under paragraph (a)(2) of the definition of persistently-lowest achieving schools.

(b) A secondary school that is eligible for title I, part A funds that—

(1)(i) Has not made adequate yearly progress for at least two consecutive years; or

(ii) Is in the State's lowest quintile of performance based on proficiency rates on the State's assessments under section 1111(b)(3) of the ESEA, in reading/language arts and mathematics combined; and

(2)(i) Is no higher achieving than the highest-achieving school identified by the SEA under paragraph (a)(2)(i) of the definition of persistently-lowest achieving school; or

(ii) Is a high school that has had a graduation rate, as defined in 34 CFR 200.19(b), that is less than 60 percent over a number of years.

Program Authority: 20 U.S.C. 1067q.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (d) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $13,920,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2016 from the list of unfunded applicants from this competition.

Estimated Average Size of Awards: $600,000.

Estimated Number of Awards: 23.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* To qualify as an eligible institution under the PBI Program, an institution of higher education (IHE) must—

(a) Have an enrollment of needy students, as defined by section 371(c)(3) of the HEA (20 U.S.C. 1067q(c)(3)).

The term *enrollment of needy students* means the enrollment at the eligible IHE with respect to which not less than 50 percent of the undergraduate students enrolled in an academic program leading to a degree—

(i) In the second fiscal year preceding the fiscal year for which the determination is made, were Federal Pell Grant recipients for such year;

(ii) Come from families that receive benefits under a means-tested Federal benefit program (as defined in section 371(c)(5) of the HEA, 20 U.S.C. 1067q(c)(5));

(iii) Attended a public or nonprofit private secondary school that—

(A) Is in the school district of an LEA that was eligible for assistance under part A of title I of the ESEA (20 U.S.C. 6311 *et seq.*), for any year during which the student attended such secondary school; and

(B) For the purpose of this paragraph and for that year, was determined by the Secretary (pursuant to regulations and after consultation with the SEA of the State in which the school is located) to be a school in which the enrollment of children counted under a measure of poverty described in section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5)) exceeds 30 percent of the total enrollment of such school; or

(iv) Are first-generation college students, as that term is defined in section 402A(h) of the HEA (20 U.S.C. 1070a-11(h)), and a majority of such first-generation college students are low-income individuals, as that term is defined in section 402A(h) of the HEA (20 U.S.C. 1070a-11(h));

(b) Have an average educational and general expenditure that is low, per full-time equivalent (FTE) undergraduate student, in comparison with the average educational and general expenditure per FTE undergraduate student of IHEs that offer similar instruction. The Secretary may waive this requirement, in accordance with section 392(b) of the HEA (20 U.S.C. 1068a(b)), in the same manner as the Secretary applies the waiver requirements to grant applicants under section 312(b)(1)(B) of the HEA (20 U.S.C. 1058(b)(1)(B));

(c) Have an enrollment of undergraduate students—

(i) That is at least 40 percent Black American students;

(ii) That is at least 1,000 undergraduate students;

(iii) Of which not less than 50 percent of the undergraduate students enrolled at the institution are low-income individuals, as that term is defined in section 402A(h) of the HEA (20 U.S.C. 1070a-11(h)), or first-generation college students, as that term is defined in section 402A(h) of the HEA (20 U.S.C. 1070a-11(h)); and

(iv) Of which not less than 50 percent of the undergraduate students are enrolled in an educational program leading to a bachelor's or associate's degree that the institution is licensed to award by the State in which the institution is located;

(d) Be legally authorized to provide, and provide, within the State an educational program for which the IHE awards a bachelor's degree or, in the case of a junior or community college, an associate's degree;

(e) Be accredited by a nationally recognized accrediting agency or association determined by the Secretary to be a reliable authority as to the quality of training offered, or be, according to such an agency or association, making reasonable progress toward accreditation; and

(f) Not be receiving assistance under part B of title III or part A of title V of the HEA or an annual authorization of appropriations under the Act of March 2, 1867 (20 U.S.C. 123).

Note: The notice for applying for designation as an eligible institution was published on November 3, 2014 (75 FR 65197) and applications were due on December 22, 2014. Only institutions that submitted applications by the deadline date and that the Department determined are eligible may apply for a grant.

Applicants must provide, as an attachment to the application, the documentation the institution relied upon to determine that at least 40 percent of the institution's undergraduate enrollment are Black American students. The 40 percent requirement applies only to *undergraduate* Black American students and is calculated based upon unduplicated undergraduate enrollment. Instructions for formatting and submitting the verification documentation are in the application package for this competition.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application via the Internet at Grants.gov. If you do not have access to the Internet, please contact Bernadette D. Miles, U.S. Department of Education, 1990 K Street NW., Washington, DC 20006–8513. Telephone: (202) 502–7616.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:*

Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria and the competitive preference priorities that reviewers use to evaluate your application. We have established the following mandatory page limits. You must limit the section of the application narrative that addresses:

- The selection criteria to no more than 40 pages.
- A competitive preference priority, if you are addressing one or both, to no more than three pages (for a total of six pages if you address both).

Accordingly, under no circumstances may the application narrative exceed 46 pages. Please include a separate heading for each competitive preference priority that you address.

For the purpose of determining compliance with the page limit, each page on which there are words will be counted as one full page. Applicants must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides. Page numbers and an identifier may be within the 1'' margins.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, figures, and graphs. These items may be single-spaced. Charts, tables, figures, and graphs in the application narrative count toward the page limit.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet SF 424; Part II, the budget section, including the narrative budget justification; or Part IV, the assurances and certifications. The page limit also does not apply to the table of contents, the one-page abstract, the resumes, the bibliography, or the letters of support. If you include any attachments or appendices not specifically requested, these items will be counted as part of the application narrative for purposes of the page-limit requirement. You must include your complete response to the selection criteria and priorities in the application narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: May 18, 2015.

Deadline for Transmittal of Applications: July 2, 2015.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 31, 2015.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372

is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the PBI Program, CFDA number 84.382A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the PBI Program at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.382, not 84.382A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under *For Further Information Contact* in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Bernadette D. Miles, U.S. Department of Education, 1990 K Street NW., Room 6025, Washington, DC 20006–8513. Fax: (202) 502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.382A) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.382A), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. Applicants must address each of the following selection criteria. We will award up to 100 points to an application under the selection criteria; the total possible points for each selection criterion are noted in parentheses.

a. *Need for project.* (Maximum 15 points) The Secretary considers the

need for the proposed project. In determining the need for the proposed project, the Secretary considers:

1. The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (5 points)

2. The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals. (5 points)

3. The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

b. *Quality of the project design.* (Maximum 30 points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

1. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)

2. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (10 points)

3. The extent to which the proposed project is supported by strong theory (as defined in this notice). (10 points)

c. *Quality of project services.* (Maximum 10 points) The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers:

1. The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (5 points)

2. The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice. (5 points)

d. *Quality of project personnel.* (Maximum 10 points) The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary considers:

1. The qualifications, including relevant training and experience, of the project director or principal investigator. (5 points)

2. The qualifications, including relevant training and experience, of key project personnel. (5 points)

e. *Adequacy of resources.* (Maximum 5 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers:

1. The extent to which the budget is adequate to support the proposed project. (3 points)

2. The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (2 points)

f. *Quality of the management plan.* (Maximum 15 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers:

1. The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (5 points)

2. The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (5 points)

3. The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (5 points)

g. *Quality of the project evaluation.* (Maximum 15 points) The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers:

1. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (5 points)

2. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (5 points)

3. The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the

necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). Please see the application package for details of annual and final reporting requirements. For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the PBI Program:

(a) The percentage of change in the number of full-time, degree-granting undergraduate students enrolled at PBIs.

(b) The percentage of first-time, full-time, degree-seeking undergraduate students at four-year PBIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same four-year PBI.

(c) The percentage of first-time, full-time, degree-seeking undergraduate students at two-year PBIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same two-year PBI.

(d) The percentage of first-time, full-time, degree-seeking undergraduate students enrolled at four-year PBIs who graduate within six years of enrollment.

(e) The percentage of first-time, full-time, degree-seeking undergraduate students enrolled at two-year PBIs who graduate within three years of enrollment.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application. In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

For Further Information Contact: Bernadette D. Miles, U.S. Department of Education, 1990 K Street NW., Room 6025, Washington, DC 20006–8513. Telephone: (202) 502–7616 or by email: *bernadette.miles@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Delegation of Authority: The Secretary of Education has delegated authority to Jamienne S. Studley, Deputy Under Secretary, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: May 13, 2015.

Jamienne S. Studley,

Deputy Under Secretary.

[FR Doc. 2015–11986 Filed 5–15–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0005]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Race to the Top Early Learning Challenge: Descriptive Study of Tiered Quality Ratings and Improvement Systems in Nine Round 1 States

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before June 17, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0005 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Tracy Rimdzius, 202–208–7154.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested

data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Race to the Top Early Learning Challenge: Descriptive Study of Tiered Quality Ratings and Improvement Systems in Nine Round 1 States.

OMB Control Number: 1850—NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 24.

Total Estimated Number of Annual Burden Hours: 87.

Abstract: The Study of Race to the Top–Early Learning Challenge Tiered Quality Rating and Improvement Systems (RTT–ELC TQRIS) will collect data from two to three RTT–ELC states on TQRIS ratings, component-level ratings, indicator-level ratings, and kindergarten entry assessments. In the event that the kindergarten entry assessment data are not available from state databases, the study will reach out to selected districts in the RTT–ELC states to collect such data. If this step proves necessary, the study will reach out to up to 42 districts in order to ultimately recruit 14 districts from which to collect assessment data. The study will use these data to conduct analyses of the relationship between TQRIS ratings and child outcome measures to inform ongoing development and improvement of TQRIS systems at the state level.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–11940 Filed 5–15–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision and Floodplain Statement of Findings for the Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC Application To Export Liquefied Natural Gas to Non-Free Trade Agreement Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Record of Decision.

SUMMARY: The U.S. Department of Energy (''DOE'') announces its decision in FE Docket No. 12–97–LNG to issue DOE/FE Order No. 3638, granting long-term, multi-contract authorization for Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC (collectively ''CMI'') to engage in export of domestically produced liquefied natural gas (''LNG'') in an amount up to 782 million million Btu (million MMBtu) per year, which is equivalent to approximately 767 billion cubic feet (''Bcf'') of natural gas per year, for a 20-year period commencing the earlier of the date of first export or seven-years from the date of issuance of the authorization requested. CMI is seeking authorization to export LNG from the proposed Corpus Christi Liquefaction Project (''Liquefaction Project'') near Corpus Christi, Texas, to any nation with which the United States has not entered into a free trade agreement (''FTA'') that requires national treatment for trade in natural gas (non-FTA countries). Order No. 3638 is issued under section 3 of the Natural Gas Act (''NGA'') and 10 CFR part 590 of the DOE regulations. DOE participated as a cooperating agency with the Federal Energy Regulatory Commission (''FERC'') in preparing an environmental impact statement (''EIS'') analyzing the potential environmental impacts of the proposed Liquefaction Project and associated pipeline that, if constructed, will support the export authorization sought from DOE's Office of Fossil Energy (''DOE/FE'').

ADDRESSES: The EIS and this Record of Decision (''ROD'') are available on DOE's National Environmental Policy Act (''NEPA'') Web site at *http://energy.gov/nepa/nepa-documents.* Order No. 3638 is available on DOE/FE's Web site at *http://energy.gov/fe/downloads/listing-doefe-authorizations-issued-2015.* For additional information about the docket in these proceedings, contact Larine Moore, U.S. Department of Energy, Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the project, the EIS, or the ROD, contact Mr. John Anderson, U.S. Department of Energy, Office of Oil & Gas Global Security & Supply, Office of Oil and Natural Gas, Office of Fossil Energy, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5600; or Mr. Edward LeDuc, U.S. Department of Energy, Office of the Assistant General Counsel for Environment, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4007.

SUPPLEMENTARY INFORMATION: DOE prepared this ROD and Floodplain Statement of Findings pursuant to the National Environmental Policy Act of 1969 (42 United States Code [U.S.C.] 4321, *et seq.*), and in compliance with the Council on Environmental Quality (''CEQ'') implementing regulations for NEPA (40 Code of Federal Regulations [CFR] parts 1500 through 1508), DOE's implementing procedures for NEPA (10 CFR part 1021), and DOE's ''Compliance with Floodplain and Wetland Environmental Review Requirements'' (10 CFR part 1022).

Background

Cheniere Marketing, LLC, a Delaware limited liability company with its principal place of business in Houston, Texas, is affiliated with Corpus Christi Liquefaction, LLC (Cheniere Marketing, LLC's co-Applicant in this proceeding) and Cheniere Corpus Christi Pipeline, L.P. (''CCP''), the developers of the Corpus Christi LNG Project (''Corpus Christi LNG Project'' or ''Project'' collectively refers to the Liquefaction Project and the Cheniere Pipeline). Cheniere Marketing, LLC is an indirect subsidiary of Cheniere Energy, Inc., a Delaware corporation with its primary place of business in Houston, Texas. Cheniere Energy, Inc. is a developer of LNG terminals and natural gas pipelines on the Gulf Coast, including the Corpus Christi LNG Project.

Cheniere Marketing, LLC filed an application (''Application'') with DOE/FE on August 31, 2012, seeking long-term, multi-contract authorization to export to non-FTA countries up to 782 million MMBtu per year of LNG, equivalent to approximately 767 Bcf per year of natural gas, for a period of 22 years beginning on the earlier of the date of first export or eight years from the date the authorization is granted by DOE/FE. On October 10, 2012, Cheniere Marketing, LLC clarified that it is requesting authorization to export LNG both on its own behalf and as agent for other parties who hold title to the LNG

at the point of export. On August 15, 2014, Cheniere Marketing, LLC amended its Application to include Corpus Christi Liquefaction, LLC as an additional applicant.

The Application was filed in conjunction with the Liquefaction Project being developed by Corpus Christi Liquefaction, LLC and Cheniere Corpus Christi Pipeline, L.P. at the site of the previously authorized import terminal and associated pipeline in San Patricia and Nueces Counties Texas.[1] Concurrent with the Application, Corpus Christi Liquefaction, LLC filed an application with FERC for authorization pursuant to Section 3(a) of the NGA [2] to site, construct and operate the Liquefaction Project. In addition, Cheniere Corpus Christi Pipeline, L.P. filed an application with the FERC pursuant to Section 7(c) of the NGA to construct, own, and operate the Cheniere Pipeline (''Pipeline'') to connect the Liquefaction Project to interstate and intrastate natural gas supplies and markets.

On August 31, 2012, in Docket No. 12–99–LNG, Cheniere Marketing, LLC filed with DOE/FE a separate application for long-term multi-contract authorization to engage in the export of LNG in an amount up to 782 million MMBtu per year, to any nation with which the United States has or in the future will have an FTA that requires national treatment for trade in natural gas; that has developed, or in the future develops, the capacity to import LNG; and with which trade is not prohibited by U.S. law or policy. On October 16, 2012, DOE/FE Order No. 3164 was issued in FE Docket No 12–99–LNG granting long-term export authorization to FTA countries from the Project.[3]

Project Description

The Liquefaction Project will be located on a 991-acre site located along the northern shore of the La Quinta Channel north and east of the City of Corpus Christi, Texas and will include three ConocoPhillips Optimized Cascade℠ LNG trains, each capable of liquefying approximately 700 million standard cubic feet (MMcf) per day of natural gas. Natural gas will be liquefied into LNG and stored in three 160,000 cubic meters LNG storage tanks, each equipped with five in-tank well columns and safety and monitoring systems. The Liquefaction Project will also include two trains of ambient air vaporizers, each with an average vaporization capacity of approximately 200 MMcf per day of natural gas, and marine terminal facilities with two LNG carrier berths. The Pipeline will include an approximately 23-mile-long, 48-inch-diameter pipeline and two compressor stations to be located wholly within San Patricio County, Texas. The Pipeline will function to transport domestic natural gas to the Liquefaction Project for liquefaction and export, as well as to transport regasified imported LNG from the LNG terminal to interconnections with the existing pipeline systems.

The EIS Process

In accordance with NEPA, FERC issued a draft EIS for the proposed Corpus Christi LNG Project on June 13, 2014. The notice of availability (''NOA'') for the draft EIS was published in the **Federal Register** on June 20, 2014 (79 FR 35344). The NOA included notice of a public comment meeting on July 15, 2014, in Portland, Texas. The NOA also provided summary information regarding the draft EIS. Copies of the draft EIS were also sent to agencies, elected officials, media organizations, Native American Tribes, private landowners, and other interested parties.

Issues raised by commenters included concerns regarding: Air pollution (including greenhouse gas emissions and mitigation and compliance with the National Ambient Air Quality Standards), construction dust and noise vibrations, land use changes, impacts of water discharges on aquatic species (including impacts to an essential fish habitat (''EFH'')), light pollution, visual impacts, public safety and lack of an emergency response plan, water use and CMI's source of water, impacts on property values, expanding the scope of the cumulative impact analysis and alternatives analysis, recreational impacts and workforce availability.[4]

The final EIS was published on October 8, 2014, and recommended that the FERC approve the Corpus Christi LNG Project. It concluded that the Project will result in some adverse environmental impacts; however, those impacts would not be significant if the Project is constructed and operated in accordance with applicable laws and regulations.

Accordingly FERC issued an Order [5] granting authorization to the Project on December 30, 2014, subject to the 104 environmental conditions contained in Appendix A of that Order.

In accordance with 40 CFR 1506.3, after an independent review of the FERC's final EIS, DOE adopted the EIS and the U.S. Environmental Protection Agency published a notice of that adoption in the **Federal Register** on April 24, 2015 (80 FR 22992).

Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States (''Addendum'')

On June 4, 2014, DOE/FE published the Draft Addendum for public comment (79 FR 32258). Although not required by NEPA, DOE/FE prepared the Addendum in an effort to be responsive to the public and to provide the best information available on a subject that had been raised by commenters. The Addendum is a review of existing literature and was intended to provide information only on the resource areas potentially impacted by unconventional gas production.

The 45-day comment period on the Draft Addendum closed on July 21, 2014. DOE/FE received 40,745 comments in 18 separate submissions, and considered those comments in issuing the Addendum on August 15, 2014. DOE/FE provided a summary of the comments received and responses to substantive comments in Appendix B of the Addendum. DOE/FE has incorporated the Draft Addendum, comments, and final Addendum into the record in its CMI proceeding.

Alternatives

The EIS conducted an alternatives analysis for the Liquefaction Project that could achieve the Project objectives. The range of alternatives analyzed included the No-Action Alternative,

[1] The CCL Project is being developed at the same general locations proposed for the previously authorized Corpus Christi LNG L.P. import terminal and associated pipeline. *See Corpus Christi LNG L.P. and Cheniere Corpus Christi Pipeline Company, Order Granting Authority Under Section 3 of the Natural Gas Act and Issuing Certificates,* 111 FERC ¶ 61,081 (2005). Since the facilities were never constructed, the Commission vacated Corpus Christi LNG, L.P.'s and Corpus Christi Pipeline Company's authorizations to construct the proposed LNG facility and associated pipeline. Corpus Christi LNG, L.P., 139 FERC ¶ 61,195 (2012).

[2] The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00–006.02 issued on November 17, 2014.

[3] *Cheniere Marketing, LLC,* Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Corpus Christi Liquefaction Project to Free Trade Agreement Nations, DOE/FE Order No. 3164, October 16, 2012 (FE Docket No 12–99–LNG).

[4] *See* Final EIS at 1–12, *Table 1.4–1 Issues Identified and Comments Received During the Scoping Process for the Corpus Christi LNG Project.*

[5] *Corpus Christi Liquefaction, LLC and Cheniere Corpus Christi Pipeline, L.P.,* Order Granting Authorization Under Section 3 of the Natural Gas Act, 149 FERC ¶ 61,283 (December 30, 2014).

system alternatives, alternative Liquefaction Project sites, alternative Pipeline routes, and alternative compressor station sites. Alternatives were evaluated and compared to the Liquefaction Project to determine if these alternatives were environmentally preferable.

While the No-Action Alternative would avoid the potential adverse and beneficial environmental impacts identified in the EIS, adoption of this alternative would preclude meeting the Project objectives. Other LNG export/import projects could also be developed elsewhere in the Gulf Coast region or in other areas of the United States, but would likely result in similar or potentially greater environmental impacts than those of the proposed Project. The No-Action Alternative could also require potential end users to make other arrangements to obtain natural gas service, or continue the use of alternative fossil fuel energy sources (such as coal or fuel oil) to compensate for the reduced availability of natural gas that would otherwise be supplied by the Corpus Christi LNG Project.

The EIS evaluated 12 system alternatives for the Project, including 6 operating LNG import terminals in the Gulf of Mexico area, and 6 proposed or planned export projects along the Gulf Coast. All of the systems were eliminated from further consideration for reasons that include the need for substantial construction beyond that currently proposed, production volume limitations, in-service dates scheduled significantly beyond the Project schedule, and potential environmental impacts that were considered comparable to or greater than those of the Project.

The EIS also evaluated three alternative Liquefaction Project sites, two in proximity to the proposed site and one near Brownsville, Texas. Construction of the terminal at each of the alternative sites would have comparable or greater environmental impacts when compared to the proposed terminal site; therefore, none of the three sites evaluated were determined to be environmentally preferable.

Approximately 86 percent of the Pipeline would be co-located, overlap, or parallel existing rights-of-way, so many types of environmental impacts have already been reduced or avoided. While two route alternatives were evaluated, the EIS did not identify any site-specific environmental concerns along the proposed route that would make the alternative pipeline routes preferable.

The EIS evaluated a total of five alternative sites for the proposed compressor stations but determined that none of these sites were environmentally preferable to the proposed sites.

Environmentally Preferred Alternative

When compared against the other action alternatives assessed in the EIS, as discussed above, the Corpus Christi LNG Project is the environmentally preferred alternative. While the No-Action Alternative would avoid the environmental impacts identified in the EIS, adoption of this alternative would not meet the Project objectives.

Decision

DOE/FE has decided to issue Order No. 3638 to grant the long-term, multi-contract authorization for CMI to engage in exports of domestically produced liquefied natural gas in an amount up to 767 Bcf per year for a 20-year period, commencing the earlier of the date of first export or seven-years from the date of issuance of the authorization requested. The authorization is to export LNG from the proposed Corpus Christi Liquefaction Project to any nation with which the United States does not now or in the future have an FTA requiring the national treatment for trade in natural gas, that has, or in the future develops, the capacity to import LNG and with which trade is not prohibited by U.S. law or policy.

Concurrently with this Record of Decision, DOE/FE is issuing Order No. 3638 in which it finds that the granting of the requested authorization has not been shown to be inconsistent with the public interest, and that the Application should be granted subject to compliance with the terms and conditions set forth in Order No. 3638, including the environmental conditions adopted in the FERC Order at Appendix A. Additionally, the authorization is conditioned on CMI's compliance with any other preventative and mitigative measures imposed by other Federal or state agencies.

Basis of Decision

DOE/FE's decision is based upon the analysis of potential environmental impacts presented in the EIS, and DOE/FE's determination in Order No. 3638 that the opponents of the Application have failed to overcome the statutory presumption that the proposed export authorization is not inconsistent with the public interest. Although not required by NEPA, DOE/FE also considered the Addendum, which summarizes available information on potential upstream impacts associated with unconventional natural gas activities, such as hydraulic fracturing.

Mitigation

As a condition of its decision to issue Order No. 3638 authorizing CMI to export LNG to non-FTA countries, DOE/FE is imposing requirements that will avoid or minimize the environmental impacts of the project. These conditions include the environmental conditions adopted in the FERC Order at Appendix A. Mitigation measures beyond those included in DOE/FE Order No. 3638 that are enforceable by other Federal and state agencies are additional conditions of Order No. 3638. With these conditions, DOE/FE has determined that all practicable means to avoid or minimize environmental harm from the project have been adopted.

Floodplain Statement of Findings

DOE prepared this Floodplain Statement of Findings in accordance with DOE's regulations entitled ''Compliance with Floodplain and Wetland Environmental Review Requirements'' (10 CFR part 1022). The required floodplain and wetland assessment was conducted during development and preparation of the EIS.[6] No alternative Liquefaction Project sites were evaluated outside of a floodplain because, as discussed in section 4.1.1.5 of the final EIS, the facilities would be placed above predicted storm surge elevations, and the site is necessarily tied to marine/port locations. Similarly, no Pipeline route alternatives outside of floodplains were evaluated because, as discussed in section 4.1.2.4 of the Final EIS, Cheniere Corpus Christi Pipeline, L.P. has proposed to implement acceptable mitigation measures at waterbody crossings and areas subject to flooding to compensate for negative buoyancy. DOE determined that the placement of some project components within floodplains would be unavoidable. However, the current design for the project minimizes floodplain impacts to the extent practicable.

Issued in Washington, DC, on May 12, 2015.

Christopher A. Smith,

Assistant Secretary, Office of Fossil Energy.

[FR Doc. 2015–11926 Filed 5–15–15; 8:45 am]

BILLING CODE 6450–01–P

[6] *See* Final EIS at Section 3.0. Table 3.1–1 and Section 3.2.3.3 were revised to include information regarding the proximity of alternative Terminal sites with respect to floodplains.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG15–82–000.
Applicants: Balko Wind Transmission, LLC.
Description: Self-Certification of Exempt Wholesale Generator Status of Balko Wind Transmission, LLC.
Filed Date: 5/5/15.
Accession Number: 20150505–5095.
Comments Due: 5 p.m. ET 5/26/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–958–002.
Applicants: Transource Kansas, LLC.
Description: Compliance filing per 35: Transource Kansas Compliance Filing to be effective 4/3/2015.
Filed Date: 5/4/15.
Accession Number: 20150504–5195.
Comments Due: 5 p.m. ET 5/26/15.
Docket Numbers: ER15–1466–001.
Applicants: ISO New England Inc., New England Power Company.
Description: Tariff Amendment per 35.17(b): Errata to Filing of First Rev Service Agreement Nos. TSA–NEP–83 and TSA–NEP–86 to be effective 6/7/201.
Filed Date: 5/4/15.
Accession Number: 20150504–5201.
Comments Due: 5 p.m. ET 5/26/15.
Docket Numbers: ER15–1665–000.
Applicants: Greenleaf Power Management LLC.
Description: Initial rate filing per 35.12 Baseline new to be effective 6/30/2015.
Filed Date: 5/4/15.
Accession Number: 20150504–5208.
Comments Due: 5 p.m. ET 5/26/15.
Docket Numbers: ER15–1666–000.
Applicants: Southwest Power Pool, Inc.
Description: Compliance Filing for Order No. 1000, Regarding Interregional Coordination and Cost Allocation of Transmission Projects with the Mid-Continent Area Power Pool and NorthWestern Corporation of Southwest Power Pool, Inc.
Filed Date: 5/4/15.
Accession Number: 20150504–5253.
Comments Due: 5 p.m. ET 5/26/15.
Docket Numbers: ER15–1667–000.
Applicants: Northwestern Corporation.
Description: Compliance Filing for Order No. 1000, Regarding Interregional Coordination and Cost Allocation of Transmission Projects with the Mid-Continent Area Power Pool and Southwest Power Pool, Inc. of Northwestern Corporation.
Filed Date: 5/4/15.
Accession Number: 20150504–5256.
Comments Due: 5 p.m. ET 5/26/15.
Docket Numbers: ER15–1668–000.
Applicants: Phoenix Energy Group, LLC.
Description: Initial rate filing per 35.12 Application for MBR Authority to be effective 6/5/2015.
Filed Date: 5/5/15.
Accession Number: 20150505–5092.
Comments Due: 5 p.m. ET 5/26/15.
Docket Numbers: ER15–1669–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Original Service Agreement No. 4104; Queue No. U2–045/W4–063 to be effective 4/7/2015.
Filed Date: 5/5/15.
Accession Number: 20150505–5154.
Comments Due: 5 p.m. ET 5/26/15.
Docket Numbers: ER15–1670–000.
Applicants: Southern California Edison Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Amended Desert Harvest LGIA to be effective 5/6/2015.
Filed Date: 5/5/15.
Accession Number: 20150505–5157.
Comments Due: 5 p.m. ET 5/26/15.
Docket Numbers: ER15–1671–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2015–5–5_TSGT-Blue River E&P–405–0.0.0-Filing to be effective 7/4/2015.
Filed Date: 5/5/15.
Accession Number: 20150505–5159.
Comments Due: 5 p.m. ET 5/26/15.
Docket Numbers: ER15–1672–000.
Applicants: Evergreen Wind Power II, LLC.
Description: Initial rate filing per 35.12 Application for Market-Based Rate Authority to be effective 7/5/2015.
Filed Date: 5/5/15.
Accession Number: 20150505–5168.
Comments Due: 5 p.m. ET 5/26/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 5, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–11811 Filed 5–15–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–132–000]

Kern River Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Summerlin Pipe Replacement Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Summerlin Pipe Replacement Project involving construction and operation of facilities by Kern River Gas Transmission Company (Kern River) in Clark County, Nevada. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before June 11, 2015.

If you sent comments on this project to the Commission before the opening of this docket on March 26, 2015, you will need to file those comments in Docket

No. CP15–132–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Kern River provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP15–132–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Kern River proposes the Summerlin Pipe Replacement Project to replace a 1.56-mile-long segment of its existing 36-inch-diameter A-line pipeline from milepost 543.63 to 545.19 in Clark County, Nevada. When originally constructed, this portion of the A-line was designed as pipeline located in a Class I location. This pipe segment must be upgraded with thicker-walled pipe to satisfy U.S. Department of Transportation safety regulations for a Class 3 location as a result of a planned residential development in the vicinity of the existing pipeline.

In order to maintain delivery to Kern River's customers, the pipeline segment would remain in service until the new pipeline segment is constructed and placed into service, after which the old segment would be removed. Due to a crossover of two existing pipelines, the new pipeline segment would be installed at a 25-foot offset from another existing Kern River line (B-line) for 1.15 miles and at a 25-foot offset from the existing A-line for 0.41 mile. To allow for uninterrupted service during the project, Kern River would install a new 24-inch-diameter crossover valve near milepost 0 of the project by hot tapping the 36-inch-diameter A-line and installing crossover piping to the 24-inch-diameter B-line crossover piping. An existing 0.22-acre valve and pig [1] launcher yard would be expanded by 0.37 acre to accommodate the new crossover valve and crossover piping. The general location of the project facilities is shown in appendix 1.[2]

Pipeline facilities are proposed to be installed and removed between October 2015 and December 2015. Kern River expects the new pipeline segment to be placed into service by December 29, 2015.

Land Requirements for Construction

Construction of the proposed facilities would disturb about 39.30 acres of land, which includes 9.74 acres of permanent right-of-way, 22.23 acres of construction right-of-way (*i.e.,* additional temporary workspace, contractor staging yards), and 7.33 acres of access roads. Kern River proposes to use a 100-foot-wide construction right-of-way to install the replacement pipeline and remove the existing pipeline segment. Of the 31.97 acres used for construction along the pipeline route, 26.12 acres was previously disturbed by construction of the existing A-line and B-line.

Following construction, Kern River would maintain 9.74 acres for permanent operation of the project's facilities with only 1.10 acres of new disturbance, accounting for overlapping rights-of-way with A-line and B-line and previously disturbed land. The remaining acreage used during construction would be restored according to Kern River's project-specific Reclamation Plan and revert to former uses.

The proposed pipeline crosses 0.44 mile (9.22 acres) of land owned and managed by the Bureau of Land Management (BLM), 1.06 miles (27.34 acres) of private property, and 0.06 mile (2.74 acres) owned by Clark County.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;

[1] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the BLM has expressed its intention to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Kern River, namely the impact on federally listed threatened and endangered species as well as BLM identified species. Other issues may be added based on your comments and our analysis.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP15–132). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: May 12, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–11922 Filed 5–15–15; 8:45 am]

BILLING CODE 6717–01–P

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–348–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization

Take notice that on April 30, 2015, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 State Highway 56, Owensboro, Kentucky 42301, filed a prior notice application pursuant to sections 157.205, 157.208, 157.211, and 157.216 of the Federal Energy Regulatory Commission's (Commission)

regulations under the Natural Gas Act (NGA), and Southern Star's blanket certificate issued in Docket No. CP82–479–000. Southern Star seeks authorization to relocate approximately 6,600 feet of 16-inch Pipeline EX–001 by means of horizontal directional drills in order to relocate the pipeline off the Platte Purchase Bridge that spans the Missouri River between Platte County, Missouri and Wyandotte County, Kansas, all as more fully set forth in the application, which is open to the public for 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. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should Phyllis K. Medley, Senior Analyst, Regulatory Compliance, Southern Star Central Gas Pipeline, Inc., 4700 State Highway 56, Owensboro, Kentucky 42301, or phone (270) 852–4653, or by email *phyllis.k.medley@sscgp.com*.

Relocation of Southern Star's 6,600 foot section of 16-inch Pipeline EX–00 is needed since the Kansas Department of Transportation and Missouri Department of Transportation are working to demolish the Platte Purchase Bridge and replace it with a new bridge system in the pipeline's location by December 1, 2016.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

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.

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 commenters 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 commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: May 12, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–11918 Filed 5–15–15; 8:45 am]

BILLING CODE 6717–01P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1025–086]

Safe Harbor Water Power Corp.; Notice of Technical Conference for Safe Harbor Project

a. Date and Time of Meeting: Monday, June 8, 2015, beginning at 10:00 a.m. (EDT) and concluding at 1:00 p.m. (EDT).

b. Place: Safe Harbor Water Power Corporation, 1 Powerhouse Road, Conestoga, PA 17516–9651.

c. *FERC Contact:* Rebecca Martin at (202) 502–6012 or email at *Rebecca.Martin@ferc.gov*.

d. Purpose of Meeting: To discuss the Commission's March 16, 2015 Order approving an increase in the normal maximum water surface elevation of Lake Clarke to 227.6 feet mean sea level (msl) from April 15 to October 15. The Order also approved a temporary increase of Lake Clarke, up to elevation 228.0 feet msl, from April 15 to October 15, if the results of the Safe Harbor annual spring mudflat surveys demonstrate that the minimum area of shorebird habitat can be maintained.

e. A summary of the meeting will be prepared for the project record.

f. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate. Please call Rebecca Martin at (202) 502–6012 or send an email to *rebecca.martin@ferc.gov* by May 26, 2015, to register your attendance for the meeting.

g. FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–208–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Dated: May 12, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–11920 Filed 5–15–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–70–000.

Applicants: Utah Red Hills Renewable Park, LLC.

Description: Clarification to February 6, 2015 Application for Authorization for Disposition of Jurisdictional Facilities and Requests for Waivers and Confidential Treatment of Utah Red Hills Renewable Park, LLC.

Filed Date: 5/12/15.

Accession Number: 20150512–5089.

Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: EC15–137–000.

Applicants: ALLETE Clean Energy, Inc., MWW Holdings, LLC,AES Armenia Mountain Wind, LLC.

Description: Joint Application for FPA Section 203 Authorization and Request for Expedited Consideration, Confidential Treatment, and Waivers of AES Armenia Mountain Wind, LLC, ALLETE Clean Energy, Inc., and MWW Holdings, LLC.

Filed Date: 5/11/15.

Accession Number: 20150511–5236.

Comments Due: 5 p.m. ET 6/1/15

Docket Numbers: EC15–138–000.

Applicants: DTE Electric Company, DTE East China, LLC.

Description: Application for Disposition of Jurisdictional Facilities, Request for Confidential Treatment, and Request for Expedited Consideration of DTE Electric Company, et al.

Filed Date: 5/11/15.

Accession Number: 20150511–5220.

Comments Due: 5 p.m. ET 6/1/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–83–008.

Applicants: Duke Energy Progress, Inc., Duke Energy Carolinas, LLC.

Description: Compliance filing per 35: SERTP Fourth Regional Compliance Filing to be effective 6/1/2014.

Filed Date: 5/12/15.

Accession Number: 20150512–5054.

Comments Due: 5 p.m. ET 6/2/15.

Docket Numbers: ER13–897–005.

Applicants: Louisville Gas and Electric Company.

Description: Compliance filing per 35: Order No. 1000 SERTP Regional Compliance Filing to be effective 6/1/2014.

Filed Date: 5/12/15.

Accession Number: 20150512–5133.

Comments Due: 5 p.m. ET 6/2/15.

Docket Numbers: ER13–908–005.

Applicants: Alabama Power Company.

Description: Compliance filing per 35: Order No. 1000 Fourth Regional Compliance Filing to be effective 6/1/2014.

Filed Date: 5/12/15.

Accession Number: 20150512–5090.

Comments Due: 5 p.m. ET 6/2/15.

Docket Numbers: ER15–1516–000.

Applicants: AES WR Limited Partnership.

Description: Baseline eTariff Filing per 35.1: AES WR Rate Schedule 1 Filing to be effective 6/15/2015.

Filed Date: 4/15/15.

Accession Number: 20150415–5300.

Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1562–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment per 35.17(b): Errata Filing to Resubmit Original Service Agreement No. 4127 to be effective 12/31/9998.

Filed Date: 5/11/15.

Accession Number: 20150511–5116.

Comments Due: 5 p.m. ET 6/1/15.

Docket Numbers: ER15–1692–000.

Applicants: AEP Texas Central Company.

Description: AEP Texas Central Company submits letter notifying FERC of the Notice of Cancellation of FERC Rate Schedule No. 70 with the City of Robstown, Texas.

Filed Date: 5/11/15.

Accession Number: 20150511–0003.

Comments Due: 5 p.m. ET 6/1/15.

Docket Numbers: ER15–1693–000.

Applicants: AEP Texas North Company.

Description: AEP Texas North Company submits letter notifying FERC of the Notice of Cancellation of FERC WTU Tariff No. 1 SA No. 17 with the City of Brady, Texas.

Filed Date: 5/11/15.

Accession Number: 20150511–0002.

Comments Due: 5 p.m. ET 6/1/15.

Docket Numbers: ER15–1695–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2015–05–12_SA 2693 NSP-Black Oak Wind 2nd Rev GIA (G858/H071) to be effective 5/13/2015.

Filed Date: 5/12/15.

Accession Number: 20150512–5092.

Comments Due: 5 p.m. ET 6/2/15.

Docket Numbers: ER15–1696–000.

Applicants: Pacific Gas and Electric Company.

Description: Notice of Termination of Large Generator Interconnection Agreement, Service Agreement No. 136 under Tariff Volume No. 5 of Pacific Gas and Electric Company.

Filed Date: 5/12/15.

Accession Number: 20150512–5098.

Comments Due: 5 p.m. ET 6/2/15.

Docket Numbers: ER15–1697–000.

Applicants: Ohio Valley Electric Corporation.

Description: Compliance filing per 35: Order 1000 Reginal Compliance Filing Transmission Planning Process to be effective 6/1/2015.

Filed Date: 5/12/15.

Accession Number: 20150512–5126.

Comments Due: 5 p.m. ET 6/2/15.

Docket Numbers: ER15–1698–000.

Applicants: Southern California Edison Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): GIA and DSA for SunEdison Quarry Street Project to be effective 7/12/2015.

Filed Date: 5/12/15.

Accession Number: 20150512–5144.

Comments Due: 5 p.m. ET 6/2/15.

Docket Numbers: ER15–1699–000.

Applicants: Southern California Edison Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Service Agreement for Wholesale Distribution Service to be effective 7/12/2015.

Filed Date: 5/12/15.

Accession Number: 20150512–5146.

Comments Due: 5 p.m. ET 6/2/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 12, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–11924 Filed 5–15–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file

associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket no.	File date	Presenter or requester
Prohibited		
1. CP14–503–000	4–15–15	Susie Purcell.[1]
2. OR15–13–000	5–8–15	KC Allan.[2]

Docket no.	File date	Presenter or requester
Exempt		
1. P–10808–000, P–2785–000	4–28–15	Hon. John R. Moolenaar.
2. CP13–483–000, CP13–492–000	4–29–15	FERC Staff.[3]
3. CP13–83–000	4–30–15	US EPA.
4. CP13–483–000, CP13–492–000	5–1–15	FERC Staff.[4]

Dated: May 12, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–11925 Filed 5–15–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC15–7–000]

Commission Information Collection Activities (FERC–915); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the requirements and burden [1] of the information collection FERC–915 (Public Utility Market-Based Rate Authorization Holders—Records Retention Requirements).

DATES: Comments on the collection of information are due July 17, 2015.

ADDRESSES: You may submit comments (identified by Docket No. IC15–7–000) by either of the following methods:

- eFiling at Commission's Web site: *http://www.ferc.gov/docs-filing/efiling.asp*
- Mail/Hand Delivery/Courier: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Type of Request: Three-year extension of the information collection requirements for the collection described below with no changes to the current reporting requirements.

Comments: Comments are invited on: (1) Whether the collection of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated

[1] Email record.

[2] Email record.

[3] Phone record.

[4] Phone record.

[1] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

collection techniques or other forms of information technology.

Title: FERC–915, Public Utility Market-Based Rate Authorization Holders—Records Retention Requirements.

OMB Control No.: 1902–0250.

Type of Request: Three-year extension of the FERC–915 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission has the regulatory responsibility under section 205 of the Federal Power Act (FPA) to ensure that wholesale sales of electricity are just and reasonable and provided in a non-discriminatory manner. The Commission uses the information maintained by the respondents under FERC–915 to monitor the entities' sales, ensure that the prices are just and reasonable, maintain the integrity of the wholesale jurisdictional sales markets, and ensure that the entities comply with the requirements of the FPA and any orders authorizing market-based rate sales. FERC–915 information collection requirements are contained in 18 Code of Federal Regulations Part 35.41(d).

Type of Respondents: Public Utility Market-Based Rate Authorization Holders.

Estimate of Annual Burden: The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–915—PUBLIC UTILITY MARKET-BASED RATE AUTHORIZATION HOLDERS—RECORD RETENTION REQUIREMENTS

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden and cost per response [2]	Total annual burden hours and total annual cost	Cost per respondent ($)
	(1)	(2)	(1)*(2)=(3)	(4)	(3)*(4)=(5)	(5)÷(1)
Electric Utilities with Market-Based Rate Authority.	1,955	1	1,955	1 hr.; $30.66	1,955 hrs.; $59,940.	$30.66

The total estimated annual cost burden to respondents is: $416,293.

- Labor costs: 1,955 hours * $30.66/hour = $59,940
- Record retention/storage cost for paper records (using an estimate of 48,891 cubic feet): $315,792 [3]
- Electronic record retention/storage cost: $40,561
  - staff-time cost: 1,955 hours ÷ 2 [4] = 977.50 hours * $28/hour [5] = $27,370;
  - electronic record storage cost: 865 * $15.25/year [6] = $13,191

Dated: May 12, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–11919 Filed 5–15–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–41–001]

Equitrans, L.P.; Notice of Filing

Take notice that on May 5, 2015, Equitrans, L.P. (Equitrans) filed an amendment, pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations, for the Ohio Valley Connector Project in West Virginia, and Ohio. The application of the project was originally filed on December 30, 2014 in Docket No. CP15–41–000. The amended filing may 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. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Paul W. Diehl, Senior Counsel, Midstream, Equitrans, L.P., 625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222. Telephone (412) 395–5540, fax (412) 553–7781, and email: *pdiehl@eqt.com*.

Equitrans states that after filing the original application, Equitrans has continued working with landowners and other interested parties with respect to the route of the pipeline and the specific facilities that will be necessary. Also, after discussions with a proposed shipper, Equitrans has determined that the proposed H–313 pipeline will not be required to provide the firm transportation service. To accommodate this change, Equitrans proposes to eliminate the H–313 pipeline from the scope of the project. The H–313 pipeline is approximately 14.0 miles and 24-inch diameter. Equitrans also proposes four minor re-routes of the proposed H–310 pipeline and changes of facilities. The amendment does not affect the Ohio Valley Connector Project's designed capacity of 850 MMcf/day.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to

[2] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $30.66 per Hour = Average Cost per Response. The hourly cost figure comes from the Bureau of Labor Statistics Web site (*http://www.bls.gov/oes/current/naics2_22.htm*). The occupation title is ''file clerk'' and the occupation code is 43–4071. 69.4 percent of this cost is hourly wages. The rest of the cost is benefits (*http://www.bls.gov/news.release/ecec.nr0.htm*).

[3] The Commission bases this figure on industry archival storage costs.

[4] Only 50% of records are retained in electronic formats.

[5] The Commission bases the $28/hour figure on a FERC staff study that included estimating public utility recordkeeping costs.

[6] The Commission bases the estimated $15.25/year for each entity on the estimated cost to service and to store 1 GB of data (based on the aggregated cost of an IBM advanced data protection server).

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 commenters will be placed on the Commission's environmental mailing list, will receive copies of any mailed environmental documents, and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters 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.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: 5:00 p.m. Eastern Time on June 2, 2015.

Dated: May 12, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–11921 Filed 5–15–15; 8:45 am]

BILLING CODE 6717–01P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2014–0926; FRL–9927–52–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Facility Ground-Water Monitoring Requirements (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), ''Facility Ground-Water Monitoring Requirements (Renewal)'' (EPA ICR No. 0959.15, OMB Control No. 2050–0033) 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 8307) on February 17, 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 17, 2015.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2014–0926, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *rcra-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: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; email address: *vyas.peggy@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: Subtitle C of the Resource Conservation and Recovery Act (RCRA) creates a comprehensive program for the safe management of hazardous waste. Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards established by EPA that are to protect the environment. Section 3005 provides for implementation of these standards under permits issued to owners and operators by EPA or authorized States. It also allows owners and operators of facilities in existence when the regulations came into effect to comply with applicable notice requirements to operate until a permit is issued or denied. This statutory authorization to operate prior to permit determination is commonly known as ''interim status.'' Owners and operators of interim status facilities also must comply with standards set under Section 3004.

This ICR examines the ground-water monitoring standards for permitted and interim status facilities at 40 CFR parts 264 and 265, as specified. The ground-water monitoring requirements for regulated units follow a tiered approach whereby releases of hazardous contaminants are first detected (detection monitoring), then confirmed (compliance monitoring), and if necessary, are required to be cleaned up (corrective action). Each of these tiers requires collection and analysis of ground-water samples. Owners or operators that conduct ground-water monitoring are required to report information on releases of contaminants and to maintain records of ground-water monitoring data at their facilities. The goal of the ground-water monitoring program is to prevent and quickly detect releases of hazardous contaminants to groundwater, and to establish a program whereby any contamination is expeditiously cleaned up as necessary to protect human health and environment.

Form Numbers: None.

Respondents/affected entities: Private facilities; and State, Local, or Tribal Governments.

Respondent's obligation to respond: Mandatory (RCRA Sections 3004 and 3005).

Estimated number of respondents: 881 (total).

Frequency of response: quarterly, semi-annually, and annually.

Total estimated burden: 117,027 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $22,424,224 (per year), includes $17,870,276 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 32,636 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. The reason for the increase is due to an increase in the respondent universe (818 for the previous ICR vs 881 for this renewal), as well as an increase in burden estimates based on consultations with respondents.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–11932 Filed 5–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2015–0100; FRL—9927–27–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Continuous Release Reporting Regulations (CRRR) Under CERCLA 1980 (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), ''Continuous Release Reporting Regulations (CRRR) Under CERCLA 1980 (Renewal)'' (EPA ICR No. 1445.12, OMB Control No. 2050–0086) 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 June 30, 2015. Public comments were previously requested via the **Federal Register** (80 FR 7460) on February 10, 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 17, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–SFUND–2015–0100, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *superfund.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: Elizabeth Bosecker, Regulations Implementation Division, Office of Emergency Management, (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–7612; email address: *bosecker.elizabeth@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: Section 103(a) of CERCLA, as amended, requires the person in charge of a vessel or facility to immediately notify the National Response Center (NRC) of a hazardous substance release into the environment if the amount of the release equals or exceeds the substance's reportable quantity (RQ). The list of hazardous substances and the RQs can be found in Table 302.4 of 40 CFR 302.4.

Section 103(f)(2) of CERCLA provides facilities relief from this per-occurrence notification requirement if the hazardous substance release at or above the RQ is continuous and stable in quantity and rate. Under the Continuous Release Reporting Requirements (CRRR), the facility must make an initial telephone call to the NRC, an initial written report to the EPA Region, and, if the source and chemical composition of the continuous release does not change and the level of the continuous release does not significantly increase, a follow-up written report must be submitted to the EPA Region one year after submission of the initial written report. If the source or chemical composition of the previously reported continuous release changes, notifying the NRC and EPA Region of a change in the source or composition of the release is required. Further, a significant increase in the level of the previously reported continuous release must be reported immediately to the NRC according to section 103(a) of CERCLA. Finally, any change in information submitted in support of a continuous release notification must be reported to the EPA Region. The reporting of a hazardous substance release that is equal to or above the substance's RQ allows the Federal government to determine whether a Federal response action is required to control or mitigate any potential adverse effects to public health or welfare or the environment.

Form Numbers: EPA Form 6100–10, Continuous Release Reporting Form.

Respondents/affected entities: EPA expects a number of different industrial categories to report hazardous substance releases under the provisions of the CRRR.

Respondent's obligation to respond: Mandatory per 40 CFR part 302 if respondents want to obtain reduced reporting for continuous releases.

Estimated number of respondents: 4,046.

Frequency of response: On occasion.

Total estimated burden: 325,582 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $17,774,471 (per year), includes $165,111 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 9,616 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to applying a growth rate of 7.5%, which is consistent with prior years reporting.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–11933 Filed 5–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2014–0486; FRL 9926–22–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted a new information collection request (ICR), ''TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting'' (EPA ICR No. 1715.14, OMB Control No. 2070–0155) 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 December 31, 2015. Public comments were previously requested via the **Federal Register** (79 FR 78084) on December 29, 2014, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A full 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 17, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OPPT–2014–0486, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by email to *oppt.ncic@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: Colby Lintner, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Mail code: 7408–M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–554–1404; fax number: 202–564–8251; email address: *TSCA-Hotline@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 *http://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: This information collection request (ICR) combines information collection activities defined in existing ICRs 1715.09 (lead-based paint activities), 1715.10 (2008 Renovation, Repair and Painting final rule), and 1715.12 (2010 Renovation, Repair and Painting opt-out and recordkeeping final rule) covering the reporting and recordkeeping requirements for individuals or firms conducting lead-based paint activities or renovation in or on houses, apartments, or child-occupied facilities built before 1978, under the authority of sections 402 and 404 of the Toxic Substances Control Act (TSCA) (15 U. S. C. 2682, 2684).

Sections 402(a) and 402(c)(3) of TSCA require EPA to develop and administer a training and certification program as well as work practice standards for persons who perform lead-based paint activities and/or renovations. The current regulations in 40 CFR part 745, subpart E, cover work practice standards, recordkeeping and reporting requirements, individual and firm certification, and enforcement for renovations done in target housing or child-occupied facilities. The current regulations in 40 CFR part 745, subpart L, cover inspections, lead hazard screens, risk assessments, and abatement activities (referred to as ''lead-based paint activities'') done in target housing and child-occupied facilities. The current regulations in 40 CFR part 745, subpart Q, establish the requirements that state or tribal programs must meet for authorization to administer the standards, regulations, or other requirements established under TSCA section 402. (See Attachment 2 for 40 CFR part 745, subparts E, L and Q.) Section 401 of TSCA defines target housing as any housing constructed before 1978 except housing for the elderly or disabled or 0-bedroom dwellings.

Sections 402(a) and 402(c)(3) of TSCA require reporting and/or recordkeeping from four entities: Firms engaged in lead-based paint activities or renovations in target housing and child-occupied facilities; individuals who perform lead-based paint activities in target housing and child-occupied facilities; training providers; and states/territories/tribes/Alaskan native villages.

Responses to the collection of information are mandatory. Respondents may claim all or part of a response confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Form Numbers: 8500–25; 8500–27.

Respondents/affected entities: Persons who provide training in lead-based paint activities and/or renovation, persons who are engaged in lead-based paint activities and/or renovation, and state agencies that administer lead-based paint activities and/or renovation programs.

Respondent's obligation to respond: Mandatory (40 CFR part 745, subparts E, L and Q).

Estimated number of respondents: 367,815 (total).

Frequency of response: Annual.

Total estimated burden: 3,312,524 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $151,077,143 per year, includes $0 annualized capital or operation and maintenance costs.

Changes in the Estimates: There is no change in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–11934 Filed 5–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0567; FRL 9926–57–OEI]

Agency Information Collection Activities; Submitted to OMB for Review and Approval; Comment Request; Pesticide Program Public Sector Collections (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA): *Pesticide Program Public Sector Collections (FIFRA Sections 18 & 24(c)),* identified by EPA ICR No. 2311.02 and OMB Control No. 2070–0182. The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is briefly summarized in this document. EPA did not receive any comments in response to the previously provided public review opportunity issued in the **Federal Register** on September 17, 2014 (79 FR 55791). With this submission, EPA is providing an additional 30 days for public review.

DATES: Comments must be received on or before June 17, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2014–0567, to both EPA and OMB as follows:

- To EPA online using *http://www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- To 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 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. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Rame Cromwell, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9068; email address: *cromwell.rame@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket: Supporting documents, including the ICR that explains in detail the information collection activities and the related burden and cost estimates that are summarized in this document, are available in the docket for this ICR. The docket can be viewed online at *http://www.regulations.gov* or in person at the EPA Docket Center, West William Jefferson Clinton Bldg., Rm. 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.*

ICR status: This ICR is currently scheduled to expire on May 31, 2015. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Under PRA, 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR covers the paperwork burden associated with two types of pesticide registration requests made by states, U.S. Territories, or Federal agencies under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136a *et seq.:* (1) Emergency exemption requests, which allow for an unregistered use of a pesticide; and (2) Requests by states to register a pesticide use to meet a special local need (SLN).

FIFRA section 18 allows EPA to grant emergency exemptions to states, U.S. Territories, and Federal agencies to allow an unregistered use of a pesticide for a limited time if EPA determines that emergency conditions exist. Section 18 requests include unregistered pesticide use exemptions for specific agricultural, public health, and quarantine purposes. FIFRA section 24(c) allows EPA to grant permission to a particular state to register additional uses of a federally registered pesticide for distribution and use within that state to meet a SLN.

Form numbers: EPA Form No. 8570–25; EPA Form No. 8570–4.

Respondents/affected entities: Entities potentially affected by this ICR are pesticides registrants, which may be identified by North American Classification System (NAICS) codes 325320 (pesticide and other agricultural chemical manufacturing), and 9241 (governments that administer environmental quality programs).

Respondent's obligation to respond: Mandatory. Required to obtain EPA permission under FIFRA sections 18 and 24(c).

Estimated total number of potential respondents: 980 (total).

Frequency of response: On occasion.

Estimated total burden: 34,175 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Estimated total costs: $2,332,954 (per year), includes $0 annualized capital investment or maintenance and operational costs.

Changes in the estimates: There is no change in the number of burden hours estimated per respondent, as compared with that identified in the ICR currently approved by OMB. However, the total burden is being adjusted to reflect a change in the estimated number of applications EPA projects might be submitted in the next three years. Although submitting a request under FIFRA section 18 and 24(c) is not mandatory, making it difficult to provide a precise estimate of how many submissions will be received in the future, EPA used the submissions received in recent years to help estimate the potential number of future submissions. The result is a slight increase in the average number of FIFRA section 18 submissions projected per year, from 128 to 185; and a small decrease in the average number of FIFRA section 24(c) petitions projected for annual submissions, from about 325 to 305. The increased burden is the total annual respondent burden for FIFRA section 18 submissions increased from 12,672 hours to 18,315 hours; while the total annual respondent burden for FIFRA section 24(c) submissions decreased from 16,900 to 15,860 hours. The net result is an increase of 4,603 hours in the total burden (*i.e.,* from 29,572 to 34,175).

Authority: 44 U.S.C. 3501 *et seq.*

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–11935 Filed 5–15–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1057 and 3060–1133]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

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 Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. 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 OMB 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 OMB control number.

DATES: Written PRA comments should be submitted on or before July 17, 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 Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–1057.

Title: Application for Authority to Construct or Make Changes in an International Broadcast Station.

Form No.: FCC Form 420–IB.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: 6 hours per response.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154, 303, 334, 336 and 339.

Total Annual Burden: 60 hours.

Annual Cost Burden: $46,050.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension following the 60-day comment period in order to obtain the full three-year clearance from OMB.

The Federal Communications Commission (''Commission'') received approval from the OMB to develop a new application titled, ''Application for Authority to Construct or Make Changes in an International Broadcast Station (FCC Form 420–IB)'' to request authority from the Commission to construct or make changes in an international broadcast station. This application has not been implemented and released to the public yet due to a lack of budget resources and technical staff. After the FCC Form 420–IB has been implemented and the Commission has obtained final approval from the OMB, it will be completed by international broadcasters in lieu of the ''Application for Authority to Construct or Make Changes in an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station,'' (FCC Form 309). In the interim, applicants will continue to file the FCC Form 309 with the Commission. (Note: The OMB approved the FCC Form 309 under OMB Control No. 3060–1035.

The information collected pursuant to the rules set forth in 47 CFR part 73, subpart F, is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. The orderly nature of the provision of international broadcast service would be in jeopardy without the Commission's involvement.

OMB Control Number: 3060–1133

Title: Application for Permit to Deliver Programs to Foreign Broadcast Stations (FCC Form 308); *47 CFR Section 73.3545* and *73.3580.*

Form No.: FCC Form 308.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit entities.

Number of Respondents/Responses: 26 respondents; 70 responses.

Estimated Time per Response: 1–2 hours.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 325(c) of the Communications Act of 1934, as amended.

Total Annual Burden: 73 hours.

Annual Cost Burden: $26,451.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission (''Commission'') is requesting that the Office of Management and Budget (OMB) approve the establishment of a new information collection titled, ''Application for Permit to Deliver Programs to Foreign Broadcast Stations (FCC Form 308).'' Applicants use the FCC Form 308 to apply, under Section 325(c) of the Communications Act of 1934, as amended, for authority to locate, use, or maintain a studio in the United States for the purpose of supplying program material to a foreign radio or TV broadcast station whose signals are consistently received in the United States, or for extension of existing authority.

Currently, the FCC Form 308 is only available to the public in paper form. The Commission obtained OMB approval of a revised FCC Form 308, in Excel format, that will be made available to the public on the FCC Forms page of the FCC's Web site, *www.fcc.gov.* The form was revised to make it more user friendly and to

include questions to obtain only the legal and technical information that is essential to grant authority to U.S. broadcasters to supply program material to a foreign radio or TV broadcast station whose signals are consistently received in the U.S. or to extend the current authority. After the applicant completes the form, it is mailed to the U.S. Bank along with the application fee. Then, it is forwarded to the International Bureau with the exception of fee exempt applications which are filed directly with the FCC Secretary's Office and then forwarded to the Bureau.

FCC Form 308 applicants now have the *option* to file their applicants in the Electronic Comment Filing System (ECFS) and make their payment of their application filing fees electronically in the FCC Fee Filer System. Please note that this method is optional rather than mandatory. We believe that the availability of this option will substantially decrease or eliminate paper filings of FCC Form 308's with the Commission. This option will save time for the applicant and Commission staff. There are no other changes to the information collection, including burden estimates.

Without this collection of information, the Commission would not be able to ascertain whether the main studio owner in the U.S. meets various legal requirements or the foreign broadcast facility, which receives and retransmits programming from the main studio in the U.S., meets various technical requirements that prevent harmful interference to other broadcast stations or telecommunications facilities.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office the of Secretary, Office of the Managing Director.

[FR Doc. 2015–11867 Filed 5–15–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–1204]

Information Collection Approved by the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Timothy May, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418–1463, or email: *timothy.may@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on April 20, 2015, OMB approved the information collection requirements relating to the text-to-911 rules contained in the Commission's *Second Report and Order,* FCC 14–118, published at 79 FR 55367, September 16, 2014. The OMB Control Number is 3060–1204. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1204, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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 and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

OMB Control Number: 3060–1204.

OMB Approval Date: April 20, 2015.

OMB Expiration Date: April 30, 2018.

Title: Deployment of Text-to-911.

Form No.: N/A.

Respondents: Business or other for-profit entities, not for profit institutions and state, local or tribal government.

Number of Respondents and Responses: 3,370 respondents; 58,012 responses.

Estimated Time Per Response: 1–8 hours.

Frequency of Response: One time reporting requirements.

Total Annual Burden: 76,237 hours.

Annual Cost Burden: None.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 154(j), 154(o), 251(e), 303(b), 303(g), 303(r), 316, and 403.

Privacy Act Impact Assessment: This information collection does not affect individuals or households, and therefore a privacy impact assessment is not required.

Nature and Extent of Confidentiality: The Commission will work with respondents to ensure that their concerns regarding the confidentiality of any proprietary or business-sensitive information are resolved in a manner consistent with the Commission's rules.

Needs and Uses: On August 13, 2014, the Commission released the Order, FCC 14–118, published at 79 FR 55367, September 16, 2014, adopting final rules—containing information collection requirements—to enable the Commission to implement text-to-911 service, providing enhanced access to emergency services for people with disabilities and fulfilling a crucial role as an alternative means of emergency communication for the general public in situations where sending a text message to 911 as opposed to placing a voice call could be vital to the caller's safety. The *Second Report and Order* adopts new rules to commence the implementation of text-to-911 service with an initial deadline of December 31, 2014 for all covered text providers to be capable of supporting text-to-911 service. The *Second Report and Order* also provides that covered text providers then have a six-month implementation period—they must begin routing all 911 text messages to a Public Safety Answering Point (PSAP) by June 30, 2015 or within six months of a valid PSAP request for text-to-911 service, whichever is later. To implement these requirements, the Commission seeks to collect information primarily for a database in which PSAPs will voluntarily register that they are technically ready to receive text messages to 911. As PSAPs become text-ready, they may either register in the PSAP database (or, if the database is not yet available, submit a notification to PS Docket Nos. 10–255 and 11–153), or provide other written notification reasonably acceptable to a covered text messaging provider. Either measure taken by the PSAP shall constitute sufficient notification pursuant to the adopted rules in the *Second Report and Order.* PSAPs and covered text providers may mutually agree to an alternative implementation timeframe (other than six months). Covered text providers must notify the FCC of the dates and terms of the alternate timeframe that they have mutually agreed on with PSAPs within 30 days of the parties' agreement.

Additionally, the rules adopted by the *Second Report and Order* include other information collections for third party notifications that need to be effective in order to implement text-to-911, including necessary notifications to consumers, covered text providers, and the Commission. These notifications are essential to ensure that all of the affected parties are aware of the limitations, capabilities, and status of text-to-911 services. These information collections will enable the Commission to meet the objectives for the implementation of text-to-911 service as of December 31, 2014 and for compliance by covered text providers with the six-month implementation period in furtherance of the Commission's core mission to ensure the public's safety.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015–11944 Filed 5–15–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-xxxx]

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 17, 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–XXXX.

Title: Public Safety Access Point (PSAP) Performance Questionnaire.

Form No.: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit entities; individuals or households; not-for-profit institutions; and State, local, or tribal Governments.

Number of Respondents and Responses: 50 respondents; 50 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion requirement; recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in Section 1 and 4(i) of the Communications Act.

Total Annual Burden: 50 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Needs and Uses: The Commission has compiled and maintains a database of Public Safety Answering Points (PSAPs) throughout the nation as part of its effort to support the expeditious implementation of E911 across the nation. The information sought in this information collection is needed to enable the Commission to ensure that the American public can report to the Commission directly problems associated with the use of 911 services. While we expect such reports to be few in number, examples of potential problems using 911 services include, but are not limited to: 911 service outages, Phase1/Phase 2 deployments, location accuracy, text-to-911 service, fraudulent and harassing 911 calls, PSAP-carrier lines of demarcation and requests for an update of master PSAP registry.

The Commission has established a web portal that allows citizens to file complaints or inquiries online. The simple questionnaire will ask the filer to type in the following information: (1) Name of PSAP; (2) PSAP ID (enables a link to the Master PSAP Registry); (3) PSAP Physical Address (number, street, city, state, zip code); (4) PSAP County of Operation; (5) Complainant's Name; (6) Complainant's Title; (7) Complainant's Organization; (8) Complainant's Phone Number; (9) Complainant's Email; (10) Nature of Inquiry—a. Complaint; b. Inquiry; (11) Complaint/Inquiry Type—a. 911 Service Outage; b. Phase1/Phase 2 Deployments; c. Location Accuracy; d. Text-to-911 Service; e. Fraudulent 911 Calls; f. PSAP—Carrier Lines of Demarcation; g. Request for Update of Master PSAP Registry; (12) Description of complaint/inquiry (Max. 1500 words); and (13) Attachments—Upload tool (should support Word Suite, PDF, Text). The questionnaire will also provide filers with the ability to upload documents and files to complete their complaints and inquiries.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–11874 Filed 5–15–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Wednesday, May 13, 2015 at 11:00 a.m.

PLACE: 999 E Street NW., Washington, DC

STATUS: This meeting was closed to the public.

ITEMS DISCUSSED: Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary.

[FR Doc. 2015–12064 Filed 5–14–15; 11:15 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee, National Institute for Occupational Safety and Health (MSHRAC, NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Time and Date: 9:30 a.m.–2:30 p.m. EDT, June 8, 2015.

Place: Teleconference and Webinar.

Status: Open to public, limited only by the space available on the webinar system, which accommodates a maximum of 100 people. If you wish to attend by phone or webinar, please contact Marie Chovanec by email at *MChovanec@cdc.gov* or by phone at 412–386–5302 at least 3 days in advance.

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters for Discussion: The meeting will focus on mining safety and health research projects and outcomes, including refuge alternatives, rock dust, silica exposures, metal mine ground control, and mining survey. The meeting will also include updates from the National Personal Protective Technology Laboratory and the Division of Respiratory Disease Studies; and committee discussion on the program portfolio.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jeffrey H. Welsh, Executive Secretary, MSHRAC, NIOSH, CDC, 626 Cochrans Mill Road, telephone (412) 386–4040, fax (412) 386–6614.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–11889 Filed 5–15–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement Number, (FOA) DP15–008, Health Promotion and Disease Prevention Research Centers: Special Interest Project Competitive Supplements (SIPS).

Time and Date: 11:00 a.m.—6:00 p.m., EDT, June 11, 2015 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters For Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Health Promotion and Disease Prevention Research Centers: Special Interest Project Competitive Supplements (SIPS)'', FOA DP15–008.

Contact Person For More Information: Brenda Colley Gilbert, Ph.D., M.S.P.H., Director, Extramural Research Program Operations and Services, CDC, 4770 Buford Highway NE., Mailstop F–80, Atlanta, Georgia 30341, Telephone: (770) 488–6295, *BJC4@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–11888 Filed 5–15–15; 8:45 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 Continuation Cooperative Agreement for Two National Activities Grant Projects Under Section 6 of the *Assistive Technology Act of 1998,* as Amended (*AT Act*)

AGENCY: Administration for Community Living, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is transitioning the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA) Catalyst Project Assistive Technology Technical Assistance Center (AT TA Center) and the University of New Hampshire Institute on Disability Assistive Technology Public Internet Site (National AT Web site) to ACL as a result of the Workforce Opportunity Improvement Act (Pub. L. 113–128) signed by President Obama in July 2014.

The RESNA Catalyst Project is a national training and technical assistance center for assistive technology programs that provides comprehensive information and state-specific, regional and national resources to entities funded under Sections 4 and 5 of the *AT Act* to improve the implementation and effectiveness of their programs, and to provide appropriate technical assistance and training to entities not funded under the *AT Act* to improve awareness of and access to assistive technology.

The University of New Hampshire Institute on Disability supports the renovation, updating, and maintenance of an accessible National AT Web site that provides the public comprehensive, up-to-date information on accommodating individuals with disabilities and resources related to assistive technology, including but not limited to programs under the *AT Act.*

The RESNA Catalyst Project and New Hampshire National AT Web site previously operated through a

cooperative agreement with the U.S. Department of Education, Rehabilitation Services Administration. The Department of Health and Human Services is currently transitioning programs under the *AT Act* to ACL.

DATES: Estimated Project Period—September 30, 2015 through September 30, 2016

SUPPLEMENTARY INFORMATION:

Program Name: Assistive Technology National Activities.

Award Amount: $640,000 to Rehabilitation Engineering and Assistive Technology Society of North America; $100,000 to University of New Hampshire Institute on Disability.

Project Period: 9/30/2015 to 9/30/2016.

Award Type: Cooperative Agreement.

Statutory Authority: This program is authorized under Section 6 of the *Assistive Technology Act of 1998,* as amended (29 U.S.C. 3005)

Catalog of Federal Domestic Assistance (CFDA) Number: 93.464 Discretionary Projects

Program Description

The purpose of the National Activities cooperative agreements with RESNA and the University of New Hampshire is to continue existing activities designed to support and improve the administration of the *AT Act.* The grantees will continue to use both traditional and innovative approaches that will assist individuals and entities through information dissemination and provide state-specific, regional and national training and technical assistance concerning assistive technology.

Justification: ACL is currently working on transitioning the Assistive Technology National Activities program to ACL. To ensure uninterrupted continuation of the grant goals and objectives, ACL plans to issue a one year non-competing award to both RESNA and the University of New Hampshire.

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this action, contact Lori Gerhard, U.S. Department of Health and Human Services, Administration for Community Living, Center for Consumer Access and Self-Determination, Office of Integrated Programs, One Massachusetts Avenue NW., Washington, DC 20001; telephone (202) 357–3443; fax (202) 357–3469; email *Lori.Gerhard@acl.hhs.gov.*

Dated: May 13, 2015.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2015–11961 Filed 5–15–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0012]

Cooperative Agreement to International Council for Harmonization of Technical Requirements for Pharmaceuticals for Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of the International Council for Harmonization of Technical Requirements for Pharmaceuticals for Human Use (ICH). The goal of the ICH is to bring together leading global drug regulatory agencies and pharmaceutical manufacturer associations to achieve greater harmonization of technical standards to ensure that safe, effective, and high-quality medicines are developed and registered in the most resource-efficient manner.

DATES: The application due date is September 30, 2015. The expiration date is October 1, 2015.

ADDRESSES: Submit electronic applications to: *http://www.grants.gov.* For more information, see section III of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Tracy Porter, Office of Strategic Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1173, Silver Spring, MD 20993, 301–796–7789, *Tracy.Porter@fda.hhs.gov*; or Lisa Ko, Office of Acquisitions and Grants Services, Food and Drug Administration, 5630 Fishers Lane, Rm. 2037, Rockville, MD 20857, 240–402–7592, *Lisa.Ko@fda.hhs.gov.*

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://www.grants.gov.* Search by Funding Opportunity Number: RFA–FD–15–014.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA–FD–15–014

93.103

A. Background

1. Authority

FDA activities to increase the harmonization of regulatory requirements to ensure that safe, effective, and high quality medicines are developed and registered in the most resource-efficient manner are authorized by 21 U.S.C. 383(c) and 393(b).

2. Program Background

The ICH is a globally unique venue with the capability of bringing together the regulatory authorities and pharmaceutical industry to discuss scientific and technical aspects of drug registration. ICH is a programmatic global priority for FDA to achieve its identified strategic priority of globalization. Working through its Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research, FDA has played a leading role in ICH since its inception in 1990. ICH, founded to harmonize drug regulatory standards between three regions, the United States, the European Union, and Japan, has gradually evolved to respond to the increasingly global face of drug development, so that the benefits of international harmonization for better global health can be realized worldwide. ICH's mission is to achieve greater harmonization to ensure that safe, effective, and high-quality medicines are developed and registered in the most resource-efficient manner.

Over the past 2 years, FDA played a leadership role in transforming ICH to meet the challenges of 21st century standards development while firmly positioning ICH future work to continue the focus on technical standards harmonization informed by relevant expertise from regulatory agencies and regulated industry. This effort has included: (1) Establishing ICH as a formal legal entity in the form of a nonprofit association under Swiss law; (2) expanding the opportunities for formal participation of other drug regulatory authorities beyond the three founding regions via the ICH Assembly; and (3) ensuring adequate and predictable funding for the ICH harmonization work (which is also critical to FDA's mission).

FDA remains an ICH founding member and completely committed to ICH success as a science-based standards development venue to ensure harmonization globally for safe, effective, and high-quality medicines. As exemplified in the past 25 years, FDA leadership and participation is an

absolutely essential element for ICH success.

B. Research Objectives

The program's grant funds will support the ICH to develop a series of international guidelines for implementation according to each region's requirements aimed at achieving the following: (1) Develop and register safe, effective, and high quality medicines in the most efficient and cost effective manner; (2) prevent unnecessary duplication of clinical trials and minimize the use of animal testing without compromising safety and effectiveness, and (3) provide public assurance that the rights, safety, and well-being of subjects are protected during clinical trials.

The ICH aims to make information readily available on ICH, ICH activities, and ICH guidelines to any country or company that requests the information. Additionally, the organization promotes a mutual understanding of regional initiatives in order to facilitate harmonization processes related to ICH guidelines regionally and globally, and to strengthen the capacity of drug regulatory authorities and industry to utilize the guidelines. These objectives will be accomplished by bringing together representatives from both regulatory agencies and pharmaceutic industries from the three founding regions to establish guidelines.

C. Eligibility Information

The following organization is eligible to apply: ICH. Within the ICH, the mission is to make recommendations towards achieving greater harmonization in the interpretation and application of technical guidelines and requirements for pharmaceutical product registration, thereby reducing or obviating duplication of testing carried out during the research and development of new human medicines. Leveraging its status as a neutral nonprofit entity focused on technical standards harmonization, the ICH aims to promote international harmonization of drug regulatory standards by bringing together representatives from both regulatory agencies and pharmaceutic industry to discuss and establish common guidelines.

II. Award Information/Funds Available

A. Award Amount

FDA intends to fund one award, corresponding to a total of up to $500,000, for fiscal year (FY) 2016. Future year amounts will depend on annual appropriations, availability of funding, and awardee performance. CDER anticipates providing four additional years of support up to the following amounts:

FY 2017: $500,000

FY 2018: $500,000

FY 2019: $500,000

FY 2020: $500,000

B. Length of Support

The support will be 1 year with the possibility of an additional 4 years of noncompetitive support. Continuation beyond the first year will be based on satisfactory performance during the preceding year, receipt of a noncompeting continuation application and available Federal FY appropriations.

III. Electronic Application, Registration, and Submission

Only electronic applications will be accepted. To submit an electronic application in response to this FOA, applicants should first review the full announcement located at *http://www.grants.gov.* (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.) Search by Funding Opportunity Number: RFA–FD–15–014.

For all electronically submitted applications, the following steps are required.

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With System for Award Management (SAM)
- Step 3: Obtain Username & Password
- Step 4: Authorized Organization Representative (AOR) Authorization
- Step 5: Track AOR Status
- Step 6: Register With Electronic Research Administration (eRA) Commons

Steps 1 through 5, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp.* Step 6, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp.* After you have followed these steps, submit electronic applications to: *http://www.grants.gov.*

Dated: May 11, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11847 Filed 5–15–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–1377]

Electronic Study Data Submission; Data Standards; Study Data Standardization Plan Recommendations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of draft recommendations for preparing a Study Data Standardization Plan (Standardization Plan). The Standardization Plan is referenced in the Study Data Technical Conformance Guide (Guide). The Guide supplements the guidance for industry ''Providing Regulatory Submissions in Electronic Format—Standardized Study Data'' and provides specifications, recommendations, and general considerations on submitting standardized study data using FDA-supported data standards. The Guide recommends that, for clinical and nonclinical studies, sponsors include a plan that describes the submission of standardized study data to FDA. The proposed recommendations describe the information that should be included in the Standardization Plan. The proposed recommendations for creating a Standardization Plan are posted on FDA's Study Data Standards Resources Web page at *http://www.fda.gov/forindustry/datastandards/studydatastandards/default.htm.*

DATES: Although you can comment on these recommendations at any time, to ensure that the Agency considers your comments, please submit either electronic or written comments by July 2, 2015.

ADDRESSES: Submit written requests for single copies of the recommendations to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests.

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. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft recommendations for preparing the Standardization Plan.

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, email: *ronald.fitzmartin@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of draft recommendations for preparing the Standardization Plan. The Standardization Plan is referenced in the Guide. The Guide supplements the guidance for industry ''Providing Regulatory Submissions in Electronic Format—Standardized Study Data'' and provides specifications, recommendations, and general considerations on submitting standardized study data using FDA-supported data standards; it is posted on FDA's Study Data Standards Resources Web page at *http://www.fda.gov/forindustry/datastandards/studydatastandards/default.htm.*

The Guide recommends that, for clinical and nonclinical studies, sponsors include a plan that describes the submission of standardized study data to FDA. The Standardization Plan will assist FDA in identifying potential data standardization issues early in the development program (*e.g.,* pre-investigational new drug application stage). The draft recommendations describe the information that should be included in the Standardization Plan. The recommendations include, but are not limited to, the following: (1) General sponsor information, (2) product information, (3) list of completed studies and standards, and (4) list of planned studies and standards.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Electronic Access

Persons with access to the Internet may obtain the proposed recommendations at either *http://www.fda.gov/forindustry/datastandards/studydatastandards/default.htm* or *http://www.regulations.gov.*

Dated: May 11, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11846 Filed 5–15–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–1439]

Adaptive Designs for Medical Device Clinical Studies; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Adaptive Designs for Medical Device Clinical Studies; Draft Guidance for Industry and Food and Drug Administration Staff.'' This guidance provides sponsors and FDA staff with guidance on how to plan and implement adaptive designs for clinical studies when used in medical device development programs. An adaptive design for a medical device clinical study is defined as a clinical trial design that allows for prospectively planned modifications based on accumulating study data without undermining the trial's integrity and validity. Adaptive designs, when properly implemented, can reduce resource requirements and/or increase the chance of study success. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 17, 2015.

ADDRESSES: An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Adaptive Designs for Medical Device Clinical Studies; Draft Guidance for Industry and Food and Drug Administration Staff'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Greg Campbell, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2110, Silver Spring, MD 20993–0002, 301–796–5750.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance provides sponsors and FDA staff with guidance on how to plan and implement adaptive designs for clinical studies when used in medical device development programs. This document addresses adaptive designs for medical device clinical trials and is applicable to premarket medical device submissions including premarket approval applications, premarket notification (510(k)) submissions, de novo submissions (evaluation of automatic class III designation), humanitarian device exemption applications, and investigational device exemption submissions. This guidance can be applied throughout the clinical development program of a medical device, from feasibility studies to pivotal clinical trials. This guidance does not apply to clinical studies of combination products or codevelopment of a pharmaceutical product with an unapproved diagnostic test.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the adaptive design of clinical

studies for medical devices. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. Persons unable to download an electronic copy of ''Adaptive Designs for Medical Device Clinical Studies; Draft Guidance for Industry and Food and Drug Administration Staff'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number GUD1500005 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, which have been approved under 0910–0120; 21 CFR part 812, which have been approved under 0910–0078; 21 CFR part 814, subparts A, B, and C, which have been approved under OMB control number 0910–0231; and 21 CFR part 814, subpart H, which have been approved under OMB control number 0910–0332.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Dated: May 12, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11820 Filed 5–15–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–1580]

Patient Preference Information—Submission, Review in Premarket Approval Applications, Humanitarian Device Exemption Applications, and De Novo Requests, and Inclusion in Device Labeling; Draft Guidance for Industry, Food and Drug Administration Staff, and Other Stakeholders; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Patient Preference Information—Submission, Review in PMAs, HDE Applications, and *De Novo* Requests, and Inclusion in Device Labeling.'' This document provides guidance on collecting and submitting patient preference information that may be used by FDA staff in decisionmaking relating to premarket approval applications (PMAs), Humanitarian Device Exemption (HDE) applications, and *de novo* requests. This draft guidance also outlines considerations for including patient preference information in labeling for patients and health care professionals. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 17, 2015.

ADDRESSES: An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Patient Preference Information—Submission, Review in PMAs, HDE Applications, and *De Novo* Requests, and Inclusion in Device Labeling'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Anindita Saha, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5414, Silver Spring, MD 20993–0002, 301–796–2537, *Anindita.Saha@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Patient Preference Information—Submission, Review in PMAs, HDE Applications, and *De Novo* Requests, and Inclusion in Device Labeling.'' FDA believes that patients can and should bring their own experiences to bear in helping the Agency to evaluate the risk-benefit profile of certain devices. This document provides guidance on collecting and submitting patient preference information that may be used by FDA staff in decision-making relating to PMAs, HDE applications, and *de novo* requests. The objectives of this draft guidance are: (1) To encourage voluntary submission of patient preference information by sponsors or other stakeholders in certain circumstances; (2) to outline recommended qualities of patient preference studies, which may result in valid scientific evidence; (3) to provide recommendations for collecting and submitting patient preference information to FDA; and (4) to outline

considerations for including patient preference information in labeling for patients and health care professionals. This draft guidance includes examples that illustrate how patient preference information may inform FDA's regulatory decisionmaking. The guidance applies to both diagnostic and therapeutic devices that are subject to these review processes. Additionally, this guidance may apply to other stakeholders such as patient groups and academia who may wish to conduct patient preference studies.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on Patient Preference Information—Submission, Review in PMAs, HDE Applications, and *De Novo* Requests, and Inclusion in Device Labeling. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov* or from CBER at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* Persons unable to download an electronic copy of ''Patient Preference Information—Submission, Review in PMAs, HDE Applications, and *De Novo* Requests, and Inclusion in Device Labeling'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500006 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 812.25(c) have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807 subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814 subparts B and E have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 814 subpart H have been approved under OMB control number 0910–0332; and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Specifically the Agency would like comments on the following questions:

1. Section IV of the draft guidance recommends qualities for patient preference studies. Do you believe these recommended qualities are clear and understandable? If not, what should be reworded or edited? Is there anything missing? If so, what needs to be added?

2. Under what conditions should health care professional or patient labeling include information about patient preference studies?

3. How should sponsors present patient preference information in the health care professional and patient labeling?

4. How should labeling indicate that only a subset of patients in a patient preference study were willing to accept certain risks in order to achieve probable benefits?

5. How should sponsors and the FDA ensure that patients receive and understand patient preference information?

Dated: May 12, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11819 Filed 5–15–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0545]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Infant Formula Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled, ''Infant Formula Requirements'' 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 March 4, 2015, the Agency submitted a proposed collection of information entitled, ''Infant Formula Requirements'' 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 0910–0256. 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 12, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11821 Filed 5–15–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: June 9, 2015.

Time: 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Room 8F100, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Raymond R. Schleef, Ph.D., Senior Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Rockville, MD 20892, 240–669–5019, *schleefrr@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project (P01).

Date: June 10, 2015.

Time: 12:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3F100, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Brenda Lange-Gustafson, Ph.D., Scientific Review Officer, NIAID/NIH/DHHS, Scientific Review Program, 5601 Fishers Lane, Room 3G13 Rockville, MD 20852, 240–669–5047, *bgustafson@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: June 11, 2015.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3G31B, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Room # 3G31B, Rockville, MD 20892, 240–669–5060, *james.snyder@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 12, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11853 Filed 5–15–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee.

Date: June 11–12, 2015.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID 5601 Fishers Lane MSC 9823, Rockville, MD 20892–9823, 240–669–5023, *fdesilva@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 12, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11852 Filed 5–15–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, June 09, 2015, 4:30 p.m. to June 10, 2015, 06:00 p.m., Doubletree Hotel Bethesda, (Formally Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on April 22, 2015, 80FR22540.

The meeting notice is amended to change the title from Exploratory/Development Research Grant Program Omnibus SEP–6 to NCI Omnibus R03 & R21 SEP–6. The meeting is closed to the public.

Dated: May 12, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11823 Filed 5–15–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, June 29, 2015, 8:00 a.m. to June 30, 2015, 05:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on April 22, 2015, 80 FR 22540.

The meeting notice is amended to change the title from Exploratory/Development Research Grant Program Omnibus SEP–3 to NCI Omnibus R03 & R21 SEP–3. The meeting is closed to the public.

Dated: May 12, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11824 Filed 5–15–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant

applications conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: June 8–10, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20852.

Contact Person: Kathryn C. Zoon, Ph.D., Director, Division of Intramural Research National Institute of Allergy and Infectious Diseases, NIH, Building 31, Room 4A30, Bethesda, MD 20892, 301–496–3006, *kzoon@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 12, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11854 Filed 5–15–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Meeting

Notice is hereby given of a meeting scheduled by the Deputy Director for Intramural Research at the National Institutes of Health (NIH) with the Chairpersons of the Boards of Scientific Counselors. The Boards of Scientific Counselors are advisory groups to the Scientific Directors of the Intramural Research Programs at the NIH. This meeting will take place on June 15, 2015, from 10:00 a.m. to 2:00 p.m., at the NIH, 1 Center Drive, Bethesda, MD 20892, Building 31, 6th Floor, Room 6. The agenda for the meeting is a discussion of policies and procedures that apply to the regular review of NIH intramural scientists and their work.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Margaret McBurney at the Office of Intramural Research, NIH, Building 1, Room 160, Telephone: (301) 496–1921, FAX Number: (301) 402–4273, or email *mmcburney@od.nih.gov* in advance of the meeting.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: May 12, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11822 Filed 5–15–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: June 17–18, 2015.

Open: June 17, 2015, 8:00 a.m. to 8:30 a.m.

Agenda: To review policy and procedures.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: June 17, 2015, 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: June 18, 2015, 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: BARBARA A. WOYNAROWSKA, Ph.D., SCIENTIFIC REVIEW ADMINISTRATOR, REVIEW BRANCH, DEA, NIDDK, NATIONAL INSTITUTES OF HEALTH, ROOM 754, 6707 DEMOCRACY BOULEVARD, BETHESDA, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: June 18–19, 2015.

Open: June 18, 2015, 8:00 a.m. to 8:30 a.m.

Agenda: To review policy and procedures.

Place: Residence Inn Arlington Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Closed: June 18, 2015, 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Arlington Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Closed: June 19, 2015, 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

PLACE: Residence Inn Arlington Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Contact Person: JOHN F. CONNAUGHTON, Ph.D. CHIEF, CHARTERED COMMITTEES SECTION, REVIEW BRANCH, DEA, NIDDK, NATIONAL INSTITUTES OF HEALTH, ROOM 753, 6707 DEMOCRACY BOULEVARD, BETHESDA, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Digestive Diseases and Nutrition C Subcommittee.

Date: June 25–26, 2015.

Open: June 25, 2015, 8:00 a.m. to 8:30 a.m.

Agenda: To review policy and procedures.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: June 25, 2015, 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: June 26, 2015, 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: ROBERT WELLNER, Ph.D., SCIENTIFIC REVIEW OFFICER, REVIEW BRANCH, DEA, NIDDK, NATIONAL INSTITUTES OF HEALTH, ROOM 706, 6707 DEMOCRACY BOULEVARD, BETHESDA, MD 20892–5452, *rw175w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 12, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11851 Filed 5–15–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Behavioral Health Information Technologies Survey—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) and Center for Behavioral Health Statistics and Quality (CBHSQ) are proposing a survey to assess health information technology (HIT) adoption among SAMHSA grantees. As part of its Strategic Initiative to advance the use of health information technologies to support integrated behavioral health care, SAMHSA has been working to develop a survey instrument that will examine the status of and plans for HIT adoption by behavioral health service providers who are implementing SAMHSA grant programs. The selected programs are funded by the by the Center for Mental Health Services (CMHS), the Center for Substance Abuse Prevention (CSAP), and (CSAT).

This project seeks to acquire baseline data necessary to inform the Agency's strategic initiative that focuses on fostering the adoption of HIT in community behavioral health services. The survey of SAMHSA grantees regarding their access to and use of health information technology will provide valuable information that will inform the behavioral HIT literature.

Approval of this data collection by the Office of Management and Budget (OMB) will allow SAMHSA to identify the current status of HIT adoption and use among a diverse group of grantees. Data from the survey will allow SAMHSA to enhance the HIT-related programmatic activities among its grantees by providing data on how HIT facilitates the implementation of different types of SAMHSA grants, thereby fostering the appropriate adoption of HIT within SAMSHA-funded programs.

The survey will collect data once, providing a snapshot view of the current state of HIT adoption. The proposed participant pool is comprised of SAMHSA grantee program leadership who are willing to provide the assistance needed to ensure a high rate of response. Awardees from nine different SAMHSA programs drawn from CMHS, CSAT, and CSAP comprise the pool of survey participants.

The survey mode for data collection will be web-based with embedded skip logic for respondents to avoid questions that are not applicable to them. The minimum amount of time for a respondent to complete the survey is 20 minutes, with respondents who do not skip items taking a maximum of 30 minutes for completion. The total estimated respondent burden is 149.6 hours.

The following table summarizes the estimated response burden.

Type of grantee or respondent	Number of respondents	Number of responses annually per respondent	Total responses	Average hours per response	Total burden hours
Screening, Brief Intervention, and Referral to Treatment (SBIRT)	18	1	18	.4	7.2
Targeted Capacity Expansion-Targeted Assisted Care	17	1	17	.4	6.8
Offender Re-entry Program	13	1	13	.4	5.2
Primary Behavioral Health Care Integration (PBHCI)	89	1	89	.4	35.6
National Child Traumatic Stress Initiative (NCTSI)	56	1	56	.4	22.4
Suicide Lifeline Crisis Center Follow-up	12	1	12	.4	4.8
Garret Lee Smith Youth Suicide Prevention Program	56	1	56	.4	22.4
Minority AIDS Initiative	113	1	113	.4	45.2
Total	374		374		149.6

Written comments and recommendations concerning the proposed information collection should be sent by June 17, 2015 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2015–11892 Filed 5–15–15; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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.

Proposed Project: Projects for Assistance in Transition From Homelessness (PATH) Program Annual Report (OMB No. 0930–0205)—Revision

The Center for Mental Health Services awards grants each fiscal year to each of the states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands from allotments authorized under the PATH program established by Public Law 101–645, 42 U.S.C. 290cc–21 *et seq.,* the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 (section 521 *et seq.* of the Public Health Service (PHS) Act). Section 522 of the PHS Act requires that the grantee states and territories must expend their payments under the Act solely for making grants to political subdivisions of the state, and to nonprofit private entities (including community-based veterans' organizations and other community organizations) for the purpose of providing services specified in the Act. Available funding is allotted in accordance with the formula provision of section 524 of the PHS Act.

This submission is for a revision of the current approval of the annual grantee reporting requirements. Section 528 of the PHS Act specifies that not later than January 31 of each fiscal year, a funded entity will prepare and submit a report in such form and containing such information as is determined necessary for securing a record and description of the purposes for which amounts received under section 521 were expended during the preceding fiscal year and of the recipients of such amounts and determining whether such amounts were expended in accordance with statutory provisions.

The proposed changes to the PATH Annual Report are as follows:

1. Format

To create a PATH report that is easier to read and questions that are easier to understand, language has been made more concise and questions have been renumbered.

2. Homeless Management Information Systems (HMIS) Data Integration

All data elements align with the 2014 HMIS Data Standards and can be extracted from HMIS.

3. Staff Training

An element has been added to the Budget section to collect information about the number of trainings provided by PATH-funded staff.

4. Number of Persons Served This Reporting Period

To decrease reporting burden and improve data quality, several revisions were made to the collection of information about persons outreached and persons enrolled. Data elements were updated to more clearly describe the data to be reported and reduce confusion and potential for misinterpretation. Information about persons outreached has been divided into two elements to collect specific information about the location of the outreach contact (street outreach or service setting).

5. Services Provided

To improve data quality, several service category labels have been updated to more accurately reflect the type of service to be reported. The ''Screening and Assessment'' category has also been divided into two separate categories to capture specific information about screenings and clinical assessments provided by PATH staff. The ''Total number of times this service was provided'' column has been removed to reduce reporting burden.

6. Referrals Provided

To improve data quality, several referral category labels have been updated to more accurately reflect the type of referral to be reported. The ''Total number of times this type of referral was provided'' column has been removed to reduce reporting burden.

7. Outcomes

Elements collecting information regarding PATH program outcomes have been added. The PATH program's transition to using local HMIS to collect PATH client data allows data on client outcomes related to the PATH program to be more easily collected and reported.

8. Demographics

Response categories for demographic data elements have been updated to fully align with the 2014 HMIS Data Standards. An element to gather information about PATH clients' connection to the SSI/SSDI Outreach, Access, and Recovery program (SOAR) has also been added.

To decrease reporting burden and improve the outreach and engagement process, demographic information for ''Persons contacted'' is no longer required. Providers are encouraged to gather information and build client records as early in the engagement process as possible. All demographic information should be collected by the point of PATH enrollment.

9. Definitions

Definitions for PATH terms have been updated to streamline definitions and increase reliability of data reporting.

The estimated annual burden for these reporting requirements is summarized in the table below.

Respondents	Number of respondents	Responses per respondent	Burden per response (hours)	Total burden
States	56	1	20	1,120
Local provider agencies	492	1	20	9,840

Respondents	Number of respondents	Responses per respondent	Burden per response (hours)	Total burden
Total	548			10,960

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 *OR* email her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received by July 17, 2015.

Summer King,

Statistician.

[FR Doc. 2015–11894 Filed 5–15–15; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA's) Center for Substance Abuse Treatment (CSAT) National Advisory Council will meet on June 16, 2015, from 2:00 p.m.–3:15 p.m. (EDT) and June 24, 2016, from 2:00 p.m.—3:15 p.m. (EDT). Both meetings will be closed to the public.

The meetings will include discussion and evaluation of grant applications reviewed by Initial Review Groups, and involve an examination of confidential financial and business information as well as personal information concerning the applicants. Therefore, both meetings will be closed to the public, as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(4) and (6) and (c)(9)(B) and 5 U.S.C. App. 2, Section 10(d).

The meetings will be held virtually. Meeting information and a roster of Council members may be obtained either by accessing the SAMHSA Council Web site at: *http://www.samhsa.gov/about-us/advisory-councils/csat-national-advisory-council* or by contacting LCDR Holly Berilla.

Council Name: SAMHSA's Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type: June 16, 2015, 2:00 p.m.–3:15 p.m. EDT, CLOSED; June 24, 2015, 2:00 p.m.–3:15 p.m. EDT, CLOSED.

Place: Virtual—Teleconference.

Contact: LCDR Holly Berilla, Acting Designated Federal Official, CSAT National Advisory Council, 1 Choke Cherry Road, Rockville, Maryland 20857 (mail), Telephone: (240) 276–1252, Fax: (240) 276–2252, Email: *holly.berilla@samhsa.hhs.gov.*

Summer King,

Statistician, SAMHSA.

[FR Doc. 2015–11891 Filed 5–15–15; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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.

Proposed Project: Data Resource Toolkit Protocol for the Crisis Counseling Assistance and Training Program (CCP)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) as part of an interagency agreement with the Federal Emergency Management Agency (FEMA) provides a toolkit to be used for the purposes of collecting data on the Crisis Counseling Assistance and Training Program (CCP). The CCP provides supplemental funding to states and territories for individual and community crisis intervention services during a federal disaster.

The CCP has provided disaster mental health services to millions of disaster survivors since its inception and, as a result of 30 years of accumulated expertise, it has become an important model for federal response to a variety of catastrophic events. Recent State CCPs include programs in New Jersey and New York following 2012 Hurricane Sandy; two programs in Colorado, one related to a wildfire and the second to a flood; a program in Oklahoma in the aftermath of severe storms and tornadoes in 2013; and programs in Washington and Alaska related to flooding and mudslides in 2014. These programs have primarily addressed the short-term mental health needs of communities through (a) outreach and public education, (b) individual and group counseling, and (c) referral. Outreach and public education serve primarily to normalize reactions and to engage people who might need further care. Crisis counseling assists survivors to cope with current stress and symptoms in order to return to predisaster functioning. Crisis counseling relies largely on ''active listening,'' and crisis counselors also provide psycho-education (especially about the nature of responses to trauma) and help clients build coping skills. Crisis counseling typically continues no more than a few times. Because crisis counseling is time-limited, referral is the third important functions of CCPs. Counselors are expected to refer clients to formal treatment if the person has developed more serious psychiatric problems.

Data about services delivered and users of services will be collected throughout the program period. The data will be collected via the use of a toolkit that relies on standardized forms. At the program level, the data will be entered quickly and easily into a cumulative database to yield summary tables for quarterly and final reports for the program. Additionally, we are in the process of developing and testing the feasibility of using mobile devices for data entry purposes. Because the data will be collected in a consistent way from all programs, they can be uploaded or linked into an ongoing national database that likewise provides CMHS

and FEMA with a way of producing summary reports of services provided across all programs funded.

The components of the tool kit are listed and described below:

- Encounter logs. These forms document all services provided. Completion of these logs is required by the crisis counselors. There are three types of encounter logs: (1) Individual/Family or Household Crisis Counseling Services Encounter Log; (2) Group Encounter Log; and (3) Weekly Tally Sheet.
  - Individual/Family or Household Crisis Counseling Services Encounter Log. Crisis counseling is defined as an interaction that lasts at least 15 minutes and involves participant disclosure. This form is completed by the Crisis Counselor for each service recipient, defined as the person or persons who actively participated in the session (*e.g.,* by verbally participating), not someone who is merely present. The same form may be completed with other family or household members who are actively engaged in the visit. Information collected includes demographics, service characteristics, risk factors, event reactions, and referral data.
  - Group Encounter Log. This form is used to identify either a group crisis counseling encounter or a group public education encounter. A check at the top identifies the class of activities (*i.e.,* counseling or education). Information collected includes services characteristics, group identity and characteristics, and group activities.
  - Weekly Tally Sheet. This form documents brief educational and supportive encounters not captured on any other form. Information collected includes service characteristics, daily tallies and weekly totals for brief educational or supportive contacts, and material distribution with no or minimal interaction.
- Assessment and Referral Tools. This tool provides descriptive information about intense users of services either child/youth or adults, defined as all individuals receiving a third individual crisis counseling visit. This tool will be used beginning three months postdisaster and will be completed by the crisis counselor.
- Participant Feedback. These surveys are completed by and collected from a sample of service recipients, not every recipient. A time sampling approach (*e.g.,* soliciting participation from all counseling encounters one week per quarter) will be used. Information collected includes satisfaction with services, perceived improvements in self-functioning, types of exposure, and event reactions.
- CCP Service Provider Feedback. These surveys are completed by and collected from the CCP service providers anonymously at six months and one year postevent. The survey will be coded on several program-level as well as worker-level variables. However, the program itself will be identified and shared with program management only if the number of individual workers was greater than 20.

There are no changes to the Individual Encounter Log, Group Encounter Log, Weekly Tally, and the Assessment and Referral Tools since the last approval. Revisions include the addition of mobile device questions to the Service Provider Feedback Form and minor revisions to the gender question on the Participant Feedback Form and Service Provider Feedback Form.

The table below is the estimates of annualized hour burden.

Form	Number of respondents	Responses per respondents	Hours per responses	Total hour burden
Individual Crisis Counseling Services Encounter Log	200	196	.13	5,096
Group Encounter Log	100	33	.07	231
Weekly Tally Sheet	200	33	.2	1,320
Assessment and Referral Tools	200	14	.25	700
Participant Feedback Survey	1,000	1	.25	250
Service Provider Feedback Survey	100	1	.41	41
Total	1,800			7,638

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 *OR* email her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received by July 17, 2015.

Summer King,

Statistician.

[FR Doc. 2015–11893 Filed 5–15–15; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4208–DR; Docket ID FEMA–2015–0002]

Maine; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maine (FEMA–4208–DR), dated March 12, 2015, and related determinations.

DATES: *Effective Date:* May 4, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Maine is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 12, 2015.

Sagadahoc County for Public Assistance.

Sagadahoc County for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant;

97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–11975 Filed 5–15–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4216–DR; Docket ID FEMA–2015–0002]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–4216–DR), dated April 30, 2015, and related determinations.

DATES: *Effective Date:* April 30, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 30, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe winter storms, snowstorms, flooding, landslides, and mudslides during the period of February 15–22, 2015, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. You are further authorized to provide snow assistance under the Public Assistance program for a limited period of time during or proximate to the incident period. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jose M. Girot, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Kentucky have been designated as adversely affected by this major disaster:

Boyd, Boyle, Caldwell, Clark, Estill, Floyd, Harlan, Jackson, Jessamine, Knott, Knox, Lawrence, Lee, Letcher, Lyon, Marshall, Menifee, Metcalfe, Morgan, Pendleton, Perry, Pike, Powell, Simpson, Taylor, Washington, and Wolfe Counties for Public Assistance.

Boyd, Boyle, Caldwell, Estill, Floyd, Jackson, Jessamine, Knott, Lawrence, Lee, Lyon, Menifee, Morgan, Pike, Powell, Simpson, Taylor, Washington, and Wolfe Counties for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate the incident period.

All areas within the Commonwealth of Kentucky are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–11974 Filed 5–15–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov*.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood

hazard determinations has 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.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 23, 2015.

Roy E. Wright,

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

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Alabama:					
Baldwin (FEMA Docket No.: B–1460).	City of Gulf Shores (14–04–6192P).	The Honorable Robert Craft, Mayor, City of Gulf Shores, P.O. Box 299, Gulf Shores, AL 36547.	Community Development Department, 1905 West 1st Street, Gulf Shores, AL 36547.	February 23, 2015	015005
Jefferson (FEMA Docket No.: B–1464).	City of Hoover (14–04–5307P).	The Honorable Gary Ivey, Mayor, City of Hoover, 100 Municipal Drive, Hoover, AL 35216.	Building Inspections Department, 2020 Valleydale Road, Hoover, AL 35244.	March 9, 2015	010123
Jefferson (FEMA Docket No.: B–1464).	Unincorporated areas of Jefferson County (14–04–5307P).	The Honorable David Carrington, Chairman, Jefferson County Board of Commissioners, 716 Richard Arrington Jr. Boulevard North, Birmingham, AL 35203.	Jefferson County Courthouse, Land Development Office, 716 Richard Arrington Jr. Boulevard North, Birmingham, AL 35203.	March 9, 2015	010127
Arizona:					
Maricopa (FEMA Docket No.: B–1460).	City of El Mirage (14–09–2966P).	The Honorable Lana Mook, Mayor, City of El Mirage, 12145 Northwest Grand Avenue, El Mirage, AZ 85335.	City Hall, 14405 North Palm Street, El Mirage, AZ 85335.	February 27, 2015	040041
Maricopa (FEMA Docket No.: B–1464).	City of Phoenix (14–09–3895P).	The Honorable Greg Stanton, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	March 9, 2015	040051
Maricopa (FEMA Docket No.: B–1460).	Unincorporated areas of Maricopa County (14–09–2190P).	The Honorable Denny Barney, Chairman, Maricopa County Board of Commissioners, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	February 27, 2015	040037
Maricopa (FEMA Docket No.: B–1460).	Unincorporated areas of Maricopa County (14–09–2966P).	The Honorable Denny Barney, Chairman, Maricopa County Board of Commissioners, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	February 27, 2015	040037
Pima (FEMA Docket No.: B–1454).	Unincorporated areas of Pima County (14–09–3325P).	The Honorable Sharon Bronson, Chair, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 97 East Congress Street, 3rd Floor, Tucson, AZ 85701.	February 26, 2015	040073
Yavapai (FEMA Docket No.: B–1464).	City of Cottonwood (13–09–1967P).	The Honorable Diane Joens, Mayor, City of Cottonwood, 827 North Main Street, Cottonwood, AZ 86326.	City Administrator's Office, 827 North Main Street, Cottonwood, AZ 86326.	February 9, 2015	040096
Yavapai (FEMA Docket No.: B–1464).	Unincorporated areas of Yavapai County (13–09–1967P).	The Honorable Rowle P. Simmons, Chairman, Yavapai County Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	Yavapai County Flood Control District, 1120 Commerce Drive, Prescott, AZ 86305.	February 9, 2015	040093
California:					
Los Angeles (FEMA Docket No.: B–1460).	Unincorporated areas of Los Angeles County (14–09–4094P).	The Honorable Don Knabe, Chairman, Los Angeles County Board of Supervisors, 500 West Temple Street, Los Angeles, CA 90012.	Los Angeles County Department of Public Works, 900 South Fremont Avenue, Alhambra, CA 91803.	March 2, 2015	065043
Merced (FEMA Docket No.: B–1464).	City of Merced (14–09–3465P).	The Honorable Stanley P. Thurston, Mayor, City of Merced, 678 West 18th Street, Merced, CA 95340.	City Hall, 678 West 18th Street, Merced, CA 95340.	March 5, 2015	060191
Riverside (FEMA Docket No.: B–1464).	City of Eastvale (14–09–2404P).	The Honorable Ike Bootsma, Mayor, City of Eastvale, 12363 Limonite Avenue, Suite 910, Eastvale, CA 91752.	City Hall, 12363 Limonite Avenue, Suite 910, Eastvale, CA 91752.	March 9, 2015	060155
Riverside (FEMA Docket No.: B–1464).	City of Norco (14–09–2404P).	The Honorable Berwin Hanna, Mayor, City of Norco, 2870 Clark Avenue, Norco, CA 92860.	City Hall, 2870 Clark Avenue, Norco, CA 92860.	March 9, 2015	060256

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Santa Clara (FEMA Docket No.: B–1460).	City of Morgan Hill (14–09–3877P).	The Honorable Steve Tate, Mayor, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037.	Public Works Department, Engineering Division, 17575 Peak Avenue, Morgan Hill, CA 95037.	March 2, 2015	060346
Florida:					
Bay (FEMA Docket No.: B–1460).	Unincorporated areas of Bay County (14–04–8612P).	The Honorable Guy M. Tunnell, Chairman, Bay County Board of Commissioners, 808 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Department, 808 West 11th Street, Panama City, FL 32401.	March 9, 2015	120004
Duval (FEMA Docket No.: B–1460).	City of Jacksonville (14–04–6432P).	The Honorable Alvin Brown, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Development Services Department, 214 Hogan Street North, Suite 2100, Jacksonville, FL 32202.	March 2, 2015	120077
Hillsborough (FEMA Docket No.: B–1454).	Unincorporated areas of Hillsborough County (13–04–1630P).	The Honorable Mark Sharpe, Chairman, Hillsborough County Board of Commissioners, 601 East Kennedy Boulevard, Tampa, FL 33602.	Hillsborough County Public Works Department, 601 East Kennedy Boulevard, Tampa, FL 33602.	February 23, 2015	120112
Monroe (FEMA Docket No.: B–1460).	City of Key West (14–04–7227P).	The Honorable Craig Cates, Mayor, City of Key West, 3126 Flagler Avenue, Key West, FL 33040.	Planning Department, 3140 Flagler Avenue, Key West, FL 33040.	February 26, 2015	120168
Orange (FEMA Docket No.: B–1460).	City of Orlando (14–04–5319P).	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32802.	Permitting Services Division, 400 South Orange Avenue, Orlando, FL 32801.	March 6, 2015	120186
Orange (FEMA Docket No.: B–1460).	Unincorporated areas of Orange County (14–04–4367P).	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, FL 32839.	March 6, 2015	120179
Orange (FEMA Docket No.: B–1460).	Unincorporated areas of Orange County (14–04–5319P).	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, FL 32839.	March 6, 2015	120179
Sarasota (FEMA Docket No.: B–1435).	City of Sarasota (14–04–5443P).	The Honorable Willie Charles Shaw, Mayor, City of Sarasota, 1565 1st Street, Sarasota, FL 34236.	City Hall, 1565 1st Street, Sarasota, FL 34236.	Nov. 13, 2014	125150
Georgia:					
Columbia (FEMA Docket No.: B–1460).	City of Grovetown (14–04–4634P).	The Honorable George W. James, III, Mayor, City of Grovetown, 103 Old Wrightsboro Road, Grovetown, GA 30813.	Water Department, 103 Old Wrightsboro Road, Grovetown, GA 30813.	March 2, 2015	130265
Columbia (FEMA Docket No.: B–1460).	Unincorporated areas of Columbia County (14–04–4634P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	Columbia County Planning Services Division, 603 Ronald Reagan Drive, Building B, 1st Floor, Evans, GA 30809.	March 2, 2015	130059
Hawaii: Maui (FEMA Docket No.: B–1460).	Maui County (14–09–2279P).	The Honorable Alan M. Arakawa, Mayor, Maui County, 200 South High Street, 9th Floor, Wailuku, HI 96793.	Maui County Planning Department, 250 South High Street, 2nd Floor, Wailuku, HI 96793.	March 2, 2015	150003
Mississippi:					
Lafayette (FEMA Docket No.: B–1460).	City of Oxford (14–04–4705P).	The Honorable George Patterson, Mayor, City of Oxford, 107 Courthouse Square, Oxford, MS 38655.	City Hall, 107 Courthouse Square, Oxford, MS 38655.	March 2, 2015	280094
Lafayette (FEMA Docket No.: B–1460).	Unincorporated areas of Lafayette County (14–04–4705P).	The Honorable Jeff Busby, President, Lafayette County Board of Supervisors, 300 North Lamar Boulevard, Oxford, MS 38655.	Lafayette County Emergency Management Department, 300 North Lamar Boulevard, Oxford, MS 38655.	March 2, 2015	280093
North Carolina:					
Brunswick (FEMA Docket No.: B–1464).	Town of St. James (13–04–4667P).	The Honorable Rebecca Dus, Mayor, Town of St. James, 4140 A Southport-Supply Road, St. James, NC 28461.	Town Hall, 4140 A Southport-Supply Road, St. James, NC 28461.	February 27, 2015	370530
Brunswick (FEMA Docket No.: B–1464).	Unincorporated areas of Brunswick County (13–04–4667P).	The Honorable Scott Phillips, Chairman, Brunswick County Board of Commissioners, P.O. Box 249, Bolivia, NC 28422.	Brunswick County Building Inspections Department, Building I, 75 Courthouse Drive, Northeast, Bolivia, NC 28422.	February 26, 2015	370295
Utah: Washington (FEMA Docket No.: B–1460).	Town of Springdale (14–08–0976P).	The Honorable Stan Smith, Mayor, Town of Springdale, 118 Lion Boulevard, Springdale, UT 84767.	Planning and Zoning Department, 118 Lion Boulevard, Springdale, UT 84767.	February 26, 2015	490179

[FR Doc. 2015–11964 Filed 5–15–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has 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.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 23, 2015.

Roy E. Wright,

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

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Alabama:					
Colbert (FEMA Docket No.: B–1460).	City of Muscle Shoals (14–04–8204P).	The Honorable David Bradford, Mayor, City of Muscle Shoals, P.O. Box 2624, Muscle Shoals, AL 35662.	City Hall, 2010 East Avalon Avenue, Muscle Shoals, AL 35661.	Feb. 2, 2015	01010047
Madison (FEMA Docket No.: B–1460).	Unincorporated areas of Madison County (14–04–7485P).	The Honorable Dale W. Strong, Chairman, Madison County Board of Commissioners, 100 Northside Square, Huntsville, AL 35801.	Madison County Public Works Department, 266–C Shields Road, Huntsville, AL 35811.	Feb. 19, 2015	010151
Shelby. (FEMA Docket No.: B–1454).	Unincorporated areas of Shelby County (14–04–4029P).	The Honorable Lindsey Allison, Chair, Shelby County Commission, 454 Valley View Drive, Pelham, AL 35124.	Shelby County Engineer's Office, 506 Highway 70, Columbiana, AL 35051.	Feb. 19, 2015	010191
Arizona:					
Maricopa (FEMA Docket No.: B–1454).	City of Phoenix (14–04–2027P).	The Honorable Greg Stanton, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	Street Transportation Department, 200 Washington Street, 5th Floor, Phoenix, AZ 85003.	Jan. 29, 2015	040051
Santa Cruz (FEMA Docket No.: B–1454).	Unincorporated areas of Santa Cruz County (14–09–3102P).	The Honorable John Maynard, Chairman, Santa Cruz County Board of Supervisors, 2150 North Congress Drive, Nogales, AZ 85621.	Santa Cruz County Flood Control District, 2150 North Congress Drive, Nogales, AZ 85621.	Feb. 2, 2015	040090
California:					
Los Angeles (FEMA Docket No.: B–1454).	City of Los Angeles (14–09–3226P).	The Honorable Eric Garcetti, Mayor, City of Los Angeles, 200 North Spring Street, Suite 303, Los Angeles, CA 90015.	Public Works Department, 1149 South Broadway, Suite 810, Los Angeles, CA 90015.	Feb. 9, 2015	060137

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Mendocino (FEMA Docket No.: B–1454).	Unincorporated areas of Mendocino County (14–09–3500P).	The Honorable John Pinches, Chairman, Mendocino County Board of Supervisors, 501 Low Gap Road, Ukiah, CA 95482.	The Honorable John Pinches, Chairman, Mendocino County Board of Supervisors, 501 Low Gap Road, Ukiah, CA 95482.	Jan. 29, 2015	060183
Riverside (FEMA Docket No.: B–1454).	City of Jurupa Valley (14–09–3381P).	The Honorable Frank Johnston, Mayor, City of Jurupa Valley, 8304 Limonite Avenue, Suite M, Jurupa Valley, CA 92509.	City Hall, 8304 Limonite Avenue, Suite M, Jurupa Valley, CA 92509.	Feb. 9, 2015	060286
San Diego (FEMA Docket No.: B–1454).	Unincorporated areas of San Diego County, (14–09–3872P).	The Honorable Dianne Jacob, Chair, San Diego County Board of Supervisors, 1600 Pacific Highway, San Diego, CA 92101.	San Diego County Department of Public Works, Flood Control Division, 5510 Overland Avenue, Suite 410, San Diego, CA 92123.	Feb. 19, 2015	060284
Colorado:					
Douglas (FEMA Docket No.: B–1454).	Town of Castle Rock (14–08–1036P).	The Honorable Paul Donahue, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	Utilities Department, 175 Kellogg Court, Castle Rock, CO 80109.	Jan. 30, 2015	080050
Douglas (FEMA Docket No.: B–1454).	Unincorporated areas of Douglas County (14–08–1036P).	The Honorable Roger Partridge, Chairman, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	The Honorable Roger Partridge, Chairman, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Jan. 30, 2015	080049
El Paso (FEMA Docket No.: B–1454).	City of Colorado Springs (14–08–0534P).	The Honorable Steve Bach, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Colorado Springs, CO 80903.	City Administration, 30 South Nevada Avenue, Colorado Springs, CO 80903.	Jan. 29, 2015	080060
El Paso (FEMA Docket No.: B–1454).	Town of Monument (14–08–0567P).	The Honorable Rafael Dominguez, Mayor, Town of Monument, 645 Beacon Lite Road, Monument, CO 80132.	Town Hall, 645 Beacon Lite Road, Monument, CO 80132.	Feb. 19, 2015	080064
El Paso (FEMA Docket No.: B–1454).	Unincorporated areas of El Paso County (14–08–0534P).	The Honorable Dennis Hisey, Chairman, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	El Paso County Administrator, 2880 International Circle, Colorado Springs, CO 80910.	Jan. 29, 2015	080059
El Paso (FEMA Docket No.: B–1454).	Unincorporated areas of El Paso County (14–08–0567P).	The Honorable Dennis Hisey, Chairman, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	El Paso County Administrator, 2880 International Circle, Colorado Springs, CO 80910.	Feb. 19, 2015	080059
Florida:					
Charlotte (FEMA Docket No.: B–1454).	Unincorporated areas of Charlotte County (14–04–7742P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	Jan. 29, 2015	120061
Lee (FEMA Docket No.: B–1464).	Unincorporated areas of Lee County (14–04–6406P).	The Honorable Larry Kiker, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	Lee County Community Development Department, 1500 Monroe Street, Fort Myers, FL 33901.	Jan. 15, 2015	125124
Georgia:					
Lee (FEMA Docket No.: B–1454).	Unincorporated areas of Lee County (14–04–0919P).	The Honorable Rick Muggridge, Chairman, Lee County Board of Commissioners, 110 Starkville Avenue North, Leesburg, GA 31763.	Lee County Courthouse, 104 Leslie Highway, Leesburg, GA 31763.	Feb. 19, 2015	130122
Worth (FEMA Docket No.: B–1454).	Unincorporated areas of Worth County (14–04–0919P).	The Honorable Mike Cosby, Chairman, Worth County Board of Commissioners, 201 North Main Street, Sylvester, GA 31791.	Worth County Courthouse, 201 North Main Street, Sylvester, GA 31791.	Feb. 19, 2015	130196
Hawaii:					
Hawaii (FEMA Docket No.: B–1464).	Hawaii County (14–09–1104P).	The Honorable William P. Kenoi, Mayor, Hawaii County, 25 Aupuni Steet, Hilo, HI 96720.	Hawaii County Department of Public Works, 101 Pauahi Street, Suite 7, Hilo, HI 96720.	Jan. 26, 2015	155166
Hawaii (FEMA Docket No.: B–1454).	Hawaii County (14–09–2534P).	The Honorable William P. Kenoi, Mayor, Hawaii County, 25 Aupuni Steet, Hilo, HI 96720.	Hawaii County Department of Public Works, 101 Pauahi Street, Suite 7, Hilo, HI 96720.	Feb. 9, 2015	155166
Nevada:					
Clark (FEMA Docket No.: B–1460).	City of Boulder City (14–09–1535P).	The Honorable Roger Tobler, Mayor, City of Boulder City, 401 California Avenue, Boulder City, NV 89005.	Engineering Department, 401 California Avenue, Boulder City, NV 89005.	Feb. 19, 2015	320004
Clark (FEMA Docket No.: B–1454).	City of Henderson (14–09–2535P).	The Honorable Andy A. Hafen, Mayor, City of Henderson, P.O. Box 95050, Henderson, NV 89009.	Public Works Department, 240 Water Street, Henderson, NV 89015.	Feb. 2, 2015	320005
Clark (FEMA Docket No.: B–1460).	Unincorporated areas of Clark County (14–09–2584P).	The Honorable Steve Sisolak, Chairman, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89155.	Clark County Public Works Department, 500 Grand Central Parkway, Las Vegas, NV 89155.	Feb. 19, 2015	320003
Elko (FEMA Docket No.: B–1454).	City of Elko (14–09–3720P).	The Honorable Chris J. Johnson, Mayor, City of Elko, 1751 College Avenue, Elko, NV 89801.	Engineering Department, 1751 College Avenue, Elko, NV 89801.	Feb. 5, 2015	320010

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
North Carolina:					
Columbus (FEMA Docket No.: B–1464).	Unincorporated areas of Columbus County (14–04–2787P).	Mr. William S. Clark, Manager, Columbus County, 111 Washington Street, Whiteville, NC 28472.	Columbus County Building Inspections Office, 306 Jefferson Street, Whiteville, NC 28472.	Feb. 20, 2015	370305
Graham (FEMA Docket No.: B–1454).	Unincorporated areas of Graham County (14–04–1210P).	Mr. Greg Cable, Manager, Graham County, 12 North Main Street, Robbinsville, NC 28771.	Graham County Emergency Management Services Department, 70 West Fort Hill Road, Robbinsville, NC 28771.	Jan. 30, 2015	370105
Guilford (FEMA Docket No.: B–1442).	City of High Point (14–04–2188P).	The Honorable William Bencini, Jr., Mayor, City of High Point, 211 South Hamilton Street, High Point, NC 27260.	Engineering Services Department, 211 South Hamilton Street, High Point, NC 27260.	Nov. 27, 2014	370113
Mecklenburg (FEMA Docket No.: B–1464).	City of Charlotte (14–04–4804P).	The Honorable Daniel Clodfelter, Mayor, City of Charlotte, 600 East 4th Street, Charlotte, NC 28202.	Mecklenburg County Storm Water Services Division, 700 North Tyron Street, Charlotte, NC 28202.	Feb. 24, 2015	370159
Mecklenburg (FEMA Docket No.: B–1460).	City of Charlotte (14–04–8637P).	The Honorable Daniel Clodfelter, Mayor, City of Charlotte, 600 East 4th Street, Charlotte, NC 28202.	Mecklenburg County Storm Water Services Division, 700 North Tryon Street, Charlotte, NC 28202.	Feb. 19, 2015	370159
South Carolina:					
Charleston (FEMA Docket No.: B–1454).	Town of Hollywood (14–04–2513P).	The Honorable Jacquelyn S. Heyward, Mayor, Town of Hollywood, P.O. Box 519, Hollywood, SC 29449.	Town Hall, 6316 Highway 162, Hollywood, SC 29449.	Feb. 2, 2015	450037
Charleston (FEMA Docket No.: B–1454).	Town of Ravenel (14–04–2514P).	The Honorable Opal N. Baldwin, Mayor, Town of Ravenel, 5962 Highway 165, Suite 100, Ravenel, SC 29470.	Town Hall, 5962 Highway 165, Suite 100, Ravenel, SC 29470.	Feb. 2, 2015	450043
Charleston (FEMA Docket No.: B–1454).	Unincorporated areas of Charleston County (14–04–2513P).	The Honorable Teddie E. Pryor, Sr., Chairman, Charleston County Council, 4045 Bridge View Drive, North Charleston, SC 29405.	Charleston County Building Inspection Services Department, 4045 Bridge View Drive, North Charleston, SC 29405.	Feb. 2, 2015	455413
Charleston (FEMA Docket No.: B–1454).	Unincorporated areas of Charleston County (14–04–2514P).	The Honorable Teddie E. Pryor, Sr., Chairman, Charleston County Council, 4045 Bridge View Drive, North Charleston, SC 29405.	Charleston County Building Inspection Services Department, 4045 Bridge View Drive, North Charleston, SC 29405.	Feb. 2, 2015	455413
Charleston (FEMA Docket No.: B–1454).	Unincorporated areas of Charleston County (14–04–3481P).	The Honorable Teddie E. Pryor, Sr., Chairman, Charleston County Council, 4045 Bridge View Drive, North Charleston, SC 29405.	Charleston County Building Inspection Services Department, 4045 Bridge View Drive, North Charleston, SC 29405.	Feb. 2, 2015	455413
Utah:					
Davis (FEMA Docket No.: B–1454).	City of Kaysville (14–08–0888P).	The Honorable Steve A. Hiatt, Mayor, City of Kaysville, 23 East Center Street, Kaysville, UT 84037.	City Hall, 23 East Center Street, Kaysville, UT 84037.	Feb. 13, 2015	490046

[FR Doc. 2015–11973 Filed 5–15–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of June 2, 2015 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has 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 notice 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 new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 22, 2015.

Roy E. Wright,

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

Community	Community map repository address
Kane County, Illinois, and Incorporated Areas Docket No.: FEMA–B–1410	
Unincorporated Areas of Kane County	Kane County Government Center, 719 Batavia Avenue, Building A, Water Resources Department, Geneva, IL 60134.
Village of Burlington	Village Hall, 175 Water Street, Burlington, IL 60109.
Village of Hampshire	Village Hall, 234 South State Street, Hampshire, IL 60140.
Greene County, New York (All Jurisdictions) Docket No.: FEMA–B–1404	
Town of Hunter	Hunter Town Hall, 5748 State Route 23A, Tannersville, NY 12485.
Town of Jewett	Municipal Building, 3547 County Route 23C, Jewett, NY 12444.
Town of Lexington	Municipal Building, 3542 State Route 42, Lexington, NY 12542.
Village of Hunter	Village Hall, 7955 Main Street, Hunter, NY 12442.
Village of Tannersville	Village Hall, 1 Park Lane, Tannersville, NY 12485.
Pittsburg County, Oklahoma, and Incorporated Areas Docket No.: FEMA–B–1404	
Town of Kiowa	City Hall, 813 South Harrison Street, Kiowa, OK 74553.
Unincorporated Areas of Pittsburg County	Pittsburg County Courthouse, 115 East Carl Albert Parkway, McAlester, OK 74501.
Weber County, Utah, and Incorporated Areas Docket No.: 1243 and 1267	
City of Ogden	City Hall, 2549 Washington Boulevard, Ogden, UT 84401.
City of Riverdale	City Hall, 4600 South Weber River Drive, Riverdale, UT 84405.
City of Uintah	City Hall, 2191 East 6550 South, Uintah, UT 84405.
Town of Huntsville	Town Hall, 7309 East 200 South, Huntsville, UT 84317.
Unincorporated Areas of Weber County	Weber County Government Building, 2380 Washington Boulevard, Ogden, UT 84401.
Prince George County, Virginia, and Incorporated Areas Docket No.: FEMA–B–1401	
Unincorporated Areas of Prince George County	Prince George County Planning and Zoning Office, 6602 Courts Drive, 1st Floor, Prince George, VA 23875.

[FR Doc. 2015–11976 Filed 5–15–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov*.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC

20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has 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.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 23, 2015.

Roy E. Wright,

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

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Arkansas: Sebastian, (FEMA Docket No.: B–1444).	City of Fort Smith, (13–06–0554P).	Mr. Ray Gosack, Administrator, City of Fort Smith, P.O. Box 1908, Fort Smith, AR 72902.	623 Garrison Avenue, 3rd Floor, Room 315, Fort Smith, AR 72901.	January 23, 2015	055013
New Mexico: Lincoln, (FEMA Docket No.: B–1458).	Unincorporated areas of Lincoln County, (14–06–2363P).	Ms. Nita Taylor, Manager, Lincoln County, P.O. Box 711, Carrizozo, NM 88301.	Lincoln County, 115 Kansas City Road, Ruidoso, NM 88345.	February 5, 2015	350122
New York:					
Cattaraugus, (FEMA Docket No.: B–1444).	Town of Ellicottville, (14–02–1952P).	The Honorable John Burrell, Supervisor, Town of Ellicottville, P.O. Box 600, Ellicottville, NY 14731.	Building Department Office, 9 Mill Street, Ellicottville, NY 14731.	February 4, 2015	360069
Cattaraugus, (FEMA Docket No.: B–1444).	Village of Ellicottville, (14–02–1952P).	The Honorable Charles R. Coolidge, Mayor, Village of Ellicottville, P.O. Box 475, Ellicottville, NY 14731.	Building Department Office, 9 Mill Street, Ellicottville, NY 14731.	February 4, 2015	360070
Pennsylvania:					
Chester, (FEMA Docket No.: B–1458).	Township of Caln, (14–03–1638P).	The Honorable John Contento, President, Caln Township Board of Commissioners, 253 Municipal Drive, Thorndale, PA 19372.	Caln Township Municipal Building, 253 Municipal Drive, Thorndale, PA 19372.	February 6, 2015	422247
Dauphin, (FEMA Docket No.: B–1458).	Township of Derry, (14–03–0956P).	The Honorable John Foley, Chairman, Derry Township Board of Supervisors, 600 Clearwater Road, Hershey, PA 17033.	Derry Township Municipal Building, 600 Clearwater Road, Hershey, PA 17033.	February 6, 2015	420376
Texas:					
Bowie, (FEMA Docket No.: B–1458).	Unincorporated areas of Bowie County, (13–06–3716P).	The Honorable James Carlow, Bowie County Judge, 710 James Bowie Drive, New Boston, TX 75570.	Bowie County Courthouse, 710 James Bowie Drive, New Boston, TX 75570.	January 27, 2015	481194
Collin, (FEMA Docket No.: B–1458).	City of Wylie, (14–06–1119P).	The Honorable Eric Hogue, Mayor, City of Wylie, 300 Country Club Road, Building 100, Wylie, TX 75098.	300 Country Club Road, Building 100, Wylie, TX 75098.	February 5, 2015	480759
Dallas and Denton, (FEMA Docket No.: B–1458).	City of Coppell, (14–06–1947P).	The Honorable Karen Hunt, Mayor, City of Coppell, P.O. Box 9478, Coppell, TX 75019.	Engineering Department, 265 Parkway Boulevard, Coppell, TX 75019.	February 9, 2015	480170
Kendall, (FEMA Docket No.: B–1458).	City of Boerne, (14–06–2663P).	The Honorable Mike Schultz, Mayor, City of Boerne, 402 East Blanco Road, Boerne, TX 78006.	Department of Planning and Community Development, 402 East Blanco Road, Boerne, TX 78006.	February 9, 2015	480418
Tarrant, (FEMA Docket No.: B–1458).	City of Colleyville, (14–06–2163P).	The Honorable David Kelly, Mayor, City of Colleyville, 100 Main Street, Colleyville, TX 76034.	Engineering Division, 100 Main Street, 2nd Floor, Colleyville, TX 76034.	February 3, 2015	480590
Tarrant, (FEMA Docket No.: B–1458).	City of Southlake, (14–06–2163P).	The Honorable John Terrell, Mayor, City of Southlake, 1400 Main Street, Suite 270, Southlake, TX 76092.	Public Works Administration and Engineering Division, 1400 Main Street, Suite 320, Southlake, TX 76092.	February 3, 2015	480612
Virginia:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Prince William (FEMA Docket No.: B–1458).	Unincorporated areas of Prince William County, (14–03–0598P).	The Honorable Melissa S. Peacor, Prince William County Executive, 1 County Complex Court, Prince William, VA 22192.	Prince William County, James J. McCoart Administration Building, 5 County Complex Court, Suite 170, Prince William, VA 22192.	January 22, 2015	510119
Stafford, (FEMA Docket No.: B–1458).	Unincorporated areas of Stafford County, (14–03–1089P).	The Honorable Gary Snellings, Chairman, Stafford County Board of Supervisors, P.O. Box 339, Stafford, VA 22555.	Stafford County Administration Center, 1300 Courthouse Road, Stafford, VA 22554.	February 4, 2015	510154

[FR Doc. 2015–11963 Filed 5–15–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–NEW]

Agency Information Collection Activities: USCIS Electronic Payment Processing, Form G–1450; New Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on October 7, 2014, at 79 FR 60488, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 17, 2015. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–NEW.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you need a copy of the information collection instrument with instructions, or additional information, please contact us at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377. Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2014–0005 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* New Collection.

(2) *Title of the Form/Collection:* USCIS Electronic Payment Processing.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1450, Authorization for Credit Card Transactions (paper and electronic intake); USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The Immigration and Nationality Act of 1952 (INA), as amended, provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other immigrant applicants (see INA section 286(m), 8 U.S.C. 1356(m)) and USCIS will accept certain fee payments electronically.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–1450 and the electronic payment processing is 2,499,158 and the estimated hour burden per response is .167 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 417,359 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is captured as a part of the form which requires a payment to be processed.

Dated: May 12, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015–11900 Filed 5–15–15; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5831–N–23]

30-Day Notice of Proposed Information Collection: Consolidated Plan and Annual Performance Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* June 17, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Colette Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 9, 2015 at 80 FR 12519.

A. Overview of Information Collection

Title of Information Collection: Consolidated Plan and Annual Performance Report.

OMB Approval Number: 2506–0117.

Type of Request: Extension.

Form Numbers: N/A.

Description of the need for the information and proposed use: The Departments collection of this information is in compliance with statutory provisions of the Cranston Gonzalez National Affordable Housing Act of 1990 that requires participating jurisdictions to submit a Comprehensive Housing Affordability Strategy (Section 105(b)); the 1974 Housing and Community Development Act, as amended, that requires states and localities to submit a Community Development Plan (Section 104(b)(4) and Section 104(m)); and statutory provisions of these Acts that requires states and localities to submit applications and reports for these formula grant programs. The information is needed to provide HUD with preliminary assessment as to the statutory and regulatory eligibility of proposed grantee projects for informing citizens of intended uses of program funds. HUD is revising components of the Integrated Disbursement and Information System (IDIS) to be in accordance with federal financial standards and Annual Appropriation Acts for the CDBG program. The revisions will affect the portion of the system used to demonstrate compliance with the 1974 Housing and Community Development Act, as amended, specifically the obligation and expenditure of CDBG grant funds. Obligations and expenditures of CDBG grant funds will be modified to be grant-specific, rather than cumulative.

Respondents (describe): States and local governments participating in the Community Development Block Grant Program (CDBG), the Home investment Partnership Program (HOME), the Emergency Solutions Grants Program (ESG) or the Housing Opportunities for Persons with AIDS/HIV Program (HOPWA).

Estimated Number of Respondents: 1,205 localities and 50 states.

Estimated Number of Responses: Consolidated Plan & Performance Reports: 2,410 localities, 100 states.*

Grant—Specific Accounting: 10,845 localities, 1900 states.

Frequency of Response: 1.

Average Hours per Response: 1,028 (localities), .84 (states),

Total Estimated Burdens: 395,973.**

Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 13, 2015.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2015–11995 Filed 5–15–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5831–N–24]

30-Day Notice of Proposed Information Collection: Production of Material or Provision of Testimony by HUD in Response to Demands in Legal Proceedings Among Private Litigants

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* June 17, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding

*Includes combined Consolidated Plan and Annual Action Plan and separate performance report.

**Includes hours for 100 localities to submit abbreviated plans,

this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Anna Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Anna Guido@hud.gov* or telephone 202–402–5535. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 6, 2015 at 80 FR 12192.

A. Overview of Information Collection

Title of Information Collection: Production of Material or Provision of Testimony by HUD Response to Demands in Legal Proceedings Among Private Litigants.

OMB Approval Number: 2510–0014.

Type of Request: Revision.

Form Numbers: N/A.

Description of the need for the information and proposed use: Section 15.203 of HUD's regulations in 24 CFR specify the manner in which demands for documents and testimony from the Department should be made. Providing the information specified in 24 CFR 15.203 allows the Department to more promptly identify documents and testimony which a requestor may be seeking and determine whether the Department should produce such documents and testimony.

Members of affected public: All types of entities, private and non-profit organizations, individuals and households.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents	Frequency of response	Hours per response	Total burden hours
106	1	1.5	159

Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 12, 2015.

Anna Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2015–11989 Filed 5–15–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5831–N–25]

30-Day Notice of Proposed Information Collection: Home Mortgage Disclosure Act (HMDA) Loan/Application Register

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* June 17, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Colette Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 16, 2014 at 79 FR 74762.

A. Overview of Information Collection

Title of Information Collection: Home Mortgage Disclosure Act (HMDA) Loan/Application Register.

OMB Approval Number: 2502–0539.

Type of Request: Reinstatement without change of a previously approved collection.

Form Numbers: N/A.

Description of the need for the information and proposed use: The HMDA Loan/Application Register collects information from mortgage lenders on application for, and originations and purchases of, mortgage and home improvement loans. Non-depository mortgage lending institutions are required to use the information generated as a running log throughout the calendar year, and send the information to HUD by March 1 of the following calendar year.

Respondents: Business and Other for profit.

Estimated Number of Respondents: 1100.

Estimated Number of Responses: 1100.

Frequency of Response: On Occasion/Annually.

Average Hours per Response: 120.

Total Estimated Burdens: 132,000.

Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 13, 2015.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2015–11992 Filed 5–15–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2015–N094: FXIA16710900000–156–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

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, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before June 17, 2015. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by June 17, 2015.

ADDRESSES: Brenda Tapia, U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2281; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: North Carolina State University, Raleigh, NC; PRT–52803B

The applicant requests a permit to import biological samples from wild specimens of the hawksbill sea turtle (*Eretmochelys imbricata*) for the purpose of scientific research.

Applicant: Mitchel Kalmanson, Maitland, FL; PRT–58231B

The applicant requests a permit to import six captive born tigers (*Panthera tigris*) from David Meda, Alvaro Obregon, Mexico for the purpose of enhancement of the survival of the species.

Applicant: Siegfried & Roy Enterprises, Inc. Las Vegas, NV; PRT–046456

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for leopards (*Panthera pardus*) to enhance the species propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Tyron Johnson, Odessa, TX; PRT–63769B

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

B. Endangered Marine Mammals and Marine Mammals

Applicant: British Broadcasting Corporation—Big Blue Live, Bristol, England, UK; PRT–62018B

The applicant requests a permit to photograph southern sea otters (*Enhydra lutris nereis*) from land and boat in California for commercial and educational purposes. This notification covers activities to be conducted by the applicant for less than a 1-year period.

Applicant: Alaska Department of Fish and Game, Fairbanks, AK; PRT–57198B

The applicant requests a permit to tag and biopsy walrus (*Odobenus rosmarus*) using crossbows and poles from land and boat in Alaska for the purpose of scientific research. This notification covers activities to be conducted by the applicant for a 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2015–11864 Filed 5–15–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2015–N101; FXIA16710900000–156–FF09A30000]

Endangered Species; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species. We issue these permits under the Endangered Species Act (ESA).

ADDRESSES: Brenda Tapia, U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2281; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
48515B	Duke Lemur Center	79 FR 62662; October 20, 2014	November 25, 2014.
33743B	Michael Luzich	79 FR 65980, November 6, 2014	April 07, 2015.
33291B	Corey Knowlton	79 FR 65980, November 6, 2014	April 20, 2015.
49163B	Xochitl De La Rosa Reyna, Texas A&M University	79 FR 76347; December 22, 2014	April 30, 2015.
48474B	Christina Tellez, University of California	80 FR 255; January 5, 2015	April 30, 2015.
42545B	Disney's Animal Kingdom	80 FR 3249, January 22, 2015	April 08, 2015.
45549B	Turtle Conservancy	80 FR 8896; February 19, 2015	April 21, 2015.
839363	Lincoln Childrens' Zoo	80 FR 13605; March 16, 2015	April 21, 2015.
55131B	Carl Pennella	80 FR 13605; March 16, 2015	April 21, 2015.
55885B	John Holz	80 FR 13605; March 16, 2015	April 21, 2015.
56756B	Cooper Ribman	80 FR 13605; March 16, 2015	April 21, 2015.
56486B	Gregory Loman	80 FR 13605; March 16, 2015	April 21, 2015.
55106B	Donald McNeeley	80 FR 13605, March 16, 2015	April 23, 2015.
55182B	Sarah Sackman	80 FR 13605, March 16, 2015	April 28, 2015.
219999	USFWS/Ecological Services Field Office	80 FR 16694; March 30, 2015	May 1, 2015.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2281.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2015–11863 Filed 5–15–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Outer Continental Shelf Official Protraction Diagrams and Supplemental Official Outer Continental Shelf Block Diagrams

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Availability of Revised North American Datum of 1927 (NAD 27) Outer Continental Shelf Official Protraction Diagrams and Supplemental Official Outer Continental Shelf Block Diagrams.

SUMMARY: Notice is hereby given of the availability of certain NAD 27-based Outer Continental Shelf (OCS) Official Protraction Diagrams (OPDs) and Supplemental Official OCS Block Diagrams (SOBDs) depicting geographic areas located in the Gulf of Mexico. BOEM, in accordance with its authority and responsibility under the OCS Lands Act, is announcing the availability of maps used for the description of renewable energy, mineral, and oil and gas lease sales in the geographic areas they represent.

The following twelve (12) OPDs (dated October 1, 2014) have been revised to reflect coast line data of the Gulf Coast of Florida that was originally approved by the U.S. Baseline Committee in 1999. Specifically, the coast line, Submerged Lands Act boundary, and the OCS Lands Act ''Section 8(g) Zone'' boundary have been revised. Eight (8) SOBDs (dated October 1, 2014) located within OPD NH16–05 (Pensacola) have been revised to reflect the intersection of the Submerged Lands Act and Section 8(g) Zone boundaries for the States of Florida and Alabama (known as the ''Florida wrap-around''). Two (2) SOBDs (dated October 1, 2014) also located within OPD NH16–05 (Pensacola) have been revised to reflect the intersection of the Submerged Lands Act and Section 8(g) Zone boundaries with the ''Military Mission Line.''

BOEM is also publishing a total of six hundred ninety-two (692) SOBDs that were generated by the Minerals Management Service (a predecessor bureau of BOEM) using coast line data that was originally approved by the U.S. Baseline Committee in 1999. These SOBDs (dated March 1, 1999) reflect the Submerged Lands Act and the Section 8(g) Zone boundaries adjacent to the Gulf Coast of Florida. In 2000, the SOBDs were submitted to the State of Florida for signature, indicating their concurrence with the MMS depiction of the boundaries. Although Florida did not sign the SOBDs, the diagrams reflect the current Federal position of these boundaries, and will eventually be superseded by diagrams with an updated format and BOEM logo. BOEM will continue working with Florida to resolve any areas of boundary discrepancy.

Outer Continental Shelf Official Protraction Diagrams in the Gulf of Mexico

Description/Date

NG17–01 (Saint Petersburg)—10/01/2014
NG17–04 (Charlotte Harbor)—10/01/2014
NG17–05 (West Palm Beach)—10/01/2014
NG17–07 (Pulley Ridge)—10/01/2014
NG17–08 (Miami)—10/01/2014
NG17–10 (Dry Tortugas)—10/01/2014
NG17–11 (Key West)—10/01/2014
NH16–05 (Pensacola)—10/01/2014
NH16–08 (Destin Dome)—10/01/2014
NH16–09 (Apalachicola)—10/01/2014
NH17–07 (Gainesville)—10/01/2014
NH17–10 (Tarpon Springs)—10/01/2014

Supplemental Official Outer Continental Shelf Block Diagrams in the Gulf of Mexico, All Located Within Official Protraction Diagram NG17–01 (Saint Petersburg)

Diagram Revised/Date/Block Numbers

Submerged Lands Act and ''Section 8(g) Zone'' blocks (Total of 65)—3/01/1999:

20, 21, 64, 65, 108, 109, 152, 153, 196, 197, 198, 240, 241, 242, 243, 285, 286, 287, 329, 330, 331, 373, 374, 375, 417, 418, 419, 461, 462, 463, 506, 507, 508, 550, 551, 552, 595, 596, 639, 640, 641, 684, 685, 686, 729, 730, 731, 773, 774, 775, 818, 819, 820, 862, 863, 864, 907, 908, 909, 951, 952, 953, 996, 997, 998.

Supplemental Official Outer Continental Shelf Block Diagrams in the Gulf of Mexico, All Located Within Official Protraction Diagram NG17–04 (Charlotte Harbor)

Diagram Revised/Date/Block Numbers

Submerged Lands Act and ''Section 8(g) Zone'' blocks (Total of 73)—3/01/1999:

28, 29, 30, 73, 74, 75, 117, 118, 119, 162, 163, 164, 206, 207, 208, 251, 252, 253, 295, 296, 297, 339, 340, 341, 384, 385, 428, 429, 430, 472, 473, 474, 517, 518, 561, 562, 563, 605, 606, 607, 650, 651, 652, 653, 695, 696, 697, 698, 699, 701, 740, 741, 742, 743, 744, 745, 746, 786, 787, 788, 789, 790, 833, 834, 877, 878, 921, 922, 965, 966, 1009, 1010, 1011.

Supplemental Official Outer Continental Shelf Block Diagrams in the Gulf of Mexico, All Located Within Official Protraction Diagram NG17–07 (Pulley Ridge)

Diagram Revised/Date/Block Numbers

Submerged Lands Act and ''Section 8(g) Zone'' blocks (Total of 8)—3/01/1999:

42, 43, 86, 87, 130, 131, 175, 219.

Supplemental Official Outer Continental Shelf Block Diagrams in the Gulf of Mexico, All Located Within Official Protraction Diagram NG17–08 (Miami)

Diagram Revised/Date/Block Numbers

Submerged Lands Act and ''Section 8(g) Zone'' blocks (Total of 72)—3/01/1999:

89, 133, 134, 177, 178, 221, 222, 223, 265, 266, 267, 268, 269, 270, 271, 272, 311, 312, 313, 314, 315, 316, 317, 359, 360, 361, 404, 405, 406, 449, 450, 451, 494, 495, 538, 539, 540, 583, 584, 627, 628, 629, 671, 672, 715, 716, 759, 760, 803, 804, 847, 848, 849, 892, 893, 933, 934, 935, 936, 937, 938, 939, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984.

Supplemental Official Outer Continental Shelf Block Diagrams in the Gulf of Mexico, All Located Within Official Protraction Diagram NG17–10 (Dry Tortugas)

Diagram Revised/Date/Block Numbers

Submerged Lands Act and ''Section 8(g) Zone'' blocks (Total of 102)—3/01/1999:

109, 110, 111, 112, 113, 114, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 169, 170, 171, 173, 174, 175, 194, 195, 196, 197, 202, 203, 204, 211, 212, 213, 214, 215, 216, 217, 218, 219, 237, 238, 239, 247, 248, 249, 254, 255, 256, 257, 258, 259, 260, 261, 262, 281, 282, 291, 292, 293, 298, 299, 300, 325, 326, 336, 337, 341, 342, 343, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 413, 414, 415, 457, 458, 459, 460, 502, 503, 504, 547, 548, 592, 636, 680, 724, 768, 812, 856, 900, 944, 969, 970, 988.

Supplemental Official Outer Continental Shelf Block Diagrams in the Gulf of Mexico, All Located Within Official Protraction Diagram NG17–11 (Key West)

Diagram Revised/Date/Block Numbers

Submerged Lands Act and ''Section 8(g) Zone'' blocks (Total of 29)—3/01/1999:

5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 47, 48, 49, 50, 51, 59, 60, 89, 90, 91, 92, 93, 133, 134, 135, 136, 177, 178.

Supplemental Official Outer Continental Shelf Block Diagrams in the Gulf of Mexico, All Located Within Official Protraction Diagram NH16–05 (Pensacola)

Diagram Revised/Date/Block Numbers

Intersection of the Submerged Lands Act and ''Section 8(g) Zone'' boundaries for the States of Florida and Alabama

(''Florida wrap-around'') blocks (Total of 8)—10/01/2014:

753, 754, 797, 798, 841, 842, 885, 886.

Intersection of the Submerged Lands Act and ''Section 8(g) Zone'' boundaries with the ''Military Mission Line'' (Total of 2)—10/01/2014:

770, 814.

Submerged Lands Act and ''Section 8(g) Zone'' blocks (Total of 86)—3/01/1999:

727, 728, 753, 754, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 797, 798, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 866, 867, 868, 869, 870, 871, 872, 885, 886, 887, 888, 889, 890, 913, 914, 915, 916, 917, 959, 960, 961, 962, 963, 1005, 1006, 1007, 1008.

Supplemental Official Outer Continental Shelf Block Diagram in the Gulf of Mexico, Located Within Official Protraction Diagram NH16–08 (Destin Dome)

Diagram Revised/Date/Block Number

Submerged Lands Act and ''Section 8(g) Zone'' block (Total of 1)—3/01/1999:

38.

Supplemental Official Outer Continental Shelf Block Diagrams in the Gulf of Mexico, All Located Within Official Protraction Diagram NH16–09 (Apalachicola)

Diagram Revised/Date/Block Numbers

Submerged Lands Act and ''Section 8(g) Zone'' blocks (Total of 115)—3/01/1999:

1, 2, 3, 4, 35, 36, 45, 46, 47, 48, 49, 79, 80, 81, 91, 92, 93, 94, 122, 123, 124, 136, 137, 138, 165, 166, 167, 168, 181, 182, 206, 207, 208, 209, 210, 211, 225, 226, 227, 249, 250, 251, 252, 253, 254, 270, 271, 291, 292, 293, 294, 295, 314, 315, 316, 334, 335, 336, 337, 338, 358, 359, 360, 377, 378, 379, 380, 403, 404, 405, 419, 420, 421, 422, 447, 448, 449, 450, 451, 452, 453, 454, 461, 462, 463, 464, 465, 492, 493, 494, 495, 496, 497, 498, 499, 500, 503, 504, 505, 506, 507, 542, 543, 544, 545, 546, 547, 548, 549, 550, 587, 588, 589, 590, 591.

Supplemental Official Outer Continental Shelf Block Diagrams in the Gulf of Mexico, All Located Within Official Protraction Diagram NH17–07 (Gainesville)

Diagram Revised/Date/Block Numbers

Submerged Lands Act and ''Section 8(g) Zone'' blocks (Total of 76)—3/01/1999:

1, 2, 45, 46, 47, 89, 90, 91, 92, 93, 134, 135, 136, 137, 138, 180, 181, 182, 183, 226, 227, 270, 271, 272, 314, 315, 316, 317, 359, 360, 361, 362, 404, 405, 406, 449, 450, 493, 494, 495, 537, 538, 539, 582, 583, 584, 585, 627, 628, 629, 630, 672, 673, 674, 675, 717, 718, 719, 762, 763, 764, 806, 807, 808, 851, 852, 853, 895, 896, 897, 940, 941, 984, 985, 986, 987.

Supplemental Official Outer Continental Shelf Block Diagrams in the Gulf of Mexico, All Located Within Official Protraction Diagram NH17–10 (Tarpon Springs)

Diagram Revised/Date/Block Numbers

Submerged Lands Act and ''Section 8(g) Zone'' blocks (Total of 65)—3/01/1999:

17, 18, 19, 20, 21, 22, 23, 62, 63, 64, 65, 66, 67, 110, 111, 154, 155, 198, 199, 242, 243, 244, 286, 287, 288, 331, 332, 375, 376, 377, 419, 420, 421, 463, 464, 507, 508, 551, 552, 593, 594, 595, 596, 636, 637, 638, 639, 640, 680, 681, 682, 724, 725, 768, 769, 812, 813, 856, 857, 900, 901, 944, 945, 988, 989.

SUPPLEMENTARY INFORMATION: Copies of the revised OPDs are available for download in .pdf format from *http://www.boem.gov/Official-Protraction-Diagrams/.*

Copies of the revised SOBDs are available for download in .pdf format from *http://www.boem.gov/Oil-and-Gas-Energy-Program/Mapping-and-Data/Supplemental-Official-OCS-Block-Diagrams-SOBDs.aspx.*

FOR FURTHER INFORMATION CONTACT: Douglas Vandegraft, Chief, Mapping and Boundary Branch at (703) 787–1312 or via email at *Doug.Vandegraft@boem.gov.*

Dated: May 1, 2015.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2015–11993 Filed 5–15–15; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: List of Restricted Joint Bidders

SUMMARY: Pursuant to the authority vested in the Director of the Bureau of Ocean Energy Management by the joint bidding provisions of 30 CFR 556.41, each entity within one of the following groups is restricted from bidding with any entity in any of the other following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period May 1, 2015, through October 31, 2015. This List of Restricted Joint Bidders will cover the period May 1, 2015, through October 31, 2015, and replace the prior list published on October 29, 2014, which covered the period November 1, 2014, through April 30, 2015.

Group I

BP America Production Company

BP Exploration & Production Inc.

BP Exploration (Alaska) Inc.

Group II

Chevron Corporation

Chevron U.S.A. Inc.

Chevron Midcontinent, L.P.

Unocal Corporation

Union Oil Company of California

Pure Partners, L.P.

Group III

Eni Petroleum Co. Inc.

Eni Petroleum US LLC

Eni Oil US LLC

Eni Marketing Inc.

Eni BB Petroleum Inc.

Eni US Operating Co. Inc.

Eni BB Pipeline LLC

Group IV

Exxon Mobil Corporation

ExxonMobil Exploration Company

Group V

Petroleo Brasileiro S.A.

Petrobras America Inc.

Group VI

Shell Oil Company

Shell Offshore Inc.

SWEPI LP

Shell Frontier Oil & Gas Inc.

SOI Finance Inc.

Shell Gulf of Mexico Inc.

Group VII

Statoil ASA

Statoil Gulf of Mexico LLC

Statoil USA E&P Inc.

Statoil Gulf Properties Inc.

Group VIII

Total E&P USA, Inc.

Dated: May 1, 2015.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2015–11980 Filed 5–15–15; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1014, 1016, and 1017 (Second Review)]

Polyvinyl Alcohol From China, Japan, and Korea

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930, that revocation of the antidumping duty orders on polyvinyl alcohol from China and Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time and that revocation of the antidumping duty order on polyvinyl alcohol from Korea would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), instituted these reviews on March 3, 2014 (79 FR 11821) and determined on June 6, 2014 that it would conduct full reviews (79 FR 69127, November 20, 2014). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 20, 2014 (79 FR 69127) (schedule revision published on February 5, 2015 (80 FR 6546)). The hearing, which was scheduled by the Commission to be held in Washington, DC, on March 10, 2015, was cancelled by the Commission at the request of the domestic interested parties (80 FR 13024, March 12, 2015).

The Commission made these determinations pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on May 12, 2015. The views of the Commission are contained in USITC Publication 4533 (May 2015), entitled *Polyvinyl Alcohol from China, Japan, and Korea: Investigation Nos. 731–TA–1014, 1016, and 1017 (Second Review).*

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

By order of the Commission.

Issued: May 12, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–11910 Filed 5–15–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On May 12, 2015, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Hawaii in the lawsuit entitled *United States* v. *City and County of Honolulu,* Civil Action No. CV 15–00173 BMK.

In this action, the United States filed a complaint under the Clean Air Act alleging violations at the Kapa'a and Kalaheo Sanitary Landfill (''Landfill'') located on the island of Oahu in Hawaii. The United States' complaint alleges violations for the City and County of Honolulu's (''CCH'') failure to timely submit a design plan for a gas collection and control system (''GCCS'') and failure to timely install and operate a GCCS. The consent decree requires CCH to pay a civil penalty in the amount of $875,000 and to implement a Supplemental Environmental Project comprised of the installation and operation of a photovoltaic system at its waste-to-energy facility located on Hanua Street, Kapolei, Hawaii. The consent decree states that, during the period of the negotiations of this consent decree, CCH submitted a GCCS design plan approved by EPA for the Landfill, installed and commenced operation of the GCCS, developed a startup, shutdown and malfunction plan, and submitted a complete application for a Title V covered source permit.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *City and County of Honolulu,* D.J. Ref. No. 90–5–2–1–09044/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $11.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–11880 Filed 5–15–15; 8:45 am]

BILLING CODE 4410–15–p

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0010]

1,2-Dibromo-3-Chloropropane (DBCP) Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified by the 1,2-Dibromo-3-Chloropropane (DBCP) Standard (29 CFR 1910.1044).

DATES: Comments must be submitted (postmarked, sent, or received) by July 17, 2015.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer

than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0010, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2012–0010) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements in the DBCP Standard provide protection for workers from the adverse health effects associated with exposure to DBCP. In this regard, the DBCP Standard requires employers to: monitor workers' exposure to DBCP; monitor worker health, and provide workers with information about their exposures and the health effects of exposure to DBCP.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

After extensive research, OSHA found no U.S. employer who currently produces DBCP or DBCP-based end-use products, most likely because the Environmental Protection Agency (EPA) registration suspension for this substance remains in effect; therefore, no cost or time burdens accrue to employers under the Standard. The Agency requests one hour for OMB to approve the information collection provisions of the Standard so that it can enforce the paperwork requirements of the Standard if EPA lifts the suspension or technology develops new applications for DBCP.

Type of Review: Extension of a currently approved collection.

Title: 1, 2-Dibromo-3-Chloropropane (DBCP) Standard (29 CFR 1910.1044).

OMB Control Number: 1218–0101.

Affected Public: Businesses or other for-profits.

Frequency: On occasion.

Average Time per Response: 0.

Estimated Total Burden Hours: 1.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0010). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled ADDRESSES). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as their social security number and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is

available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on May 13, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–11896 Filed 5–15–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Coal Mine Workers' Compensation; Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (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, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection:

Authorization for Release of Medical Information (CM–936). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before July 17, 2015.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3201, Washington, DC 20210, telephone (202) 354–9647, fax (202) 343–5974, Email *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. *Background:* The Black Lung Benefits Act, as amended, 30 U.S.C. 901, and 20 CFR 725.405, requires that all relevant medical evidence be considered before a decision can be made regarding a claimant's eligibility for benefits. The CM–936 is a form that gives the claimant's consent for release of information, required by the Privacy Act, and contains information required by medical institutions and private physicians to enable them to release pertinent medical information. This information collection is currently approved for use through October 31, 2015.

II. *Review Focus:* The Department of Labor 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:* The Department of Labor seeks approval for the extension of this currently-approved information collection in order to obtain claimant consent for the release of medical information for consideration by the Division of Coal Mine Workers' Compensation as evidence to support their claim for benefits. Failure to gather this information would inhibit the adjudication of black lung claims because pertinent medical data would not be available for consideration during the processing of the claim.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Authorization for Release of Medical Information.

OMB Number: 1240–0034.

Agency Number: CM–936.

Affected Public: Individuals or households.

Total Respondents: 900.

Total Annual Responses: 900.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 75.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $3,835.

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

Dated: May 12, 2015.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2015–11885 Filed 5–15–15; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (15–037)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 18, 2015.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Counsel, Langley Research Center, Mail Stop 30, Hampton, VA 23681–2199; telephone (757) 864–3230; fax (757) 864–9190.

NASA Case No.: LAR–18463–1: Energy-Absorbing Beam Member;

NASA Case No.: LAR–18509–1: Infrasonic Stethoscope for Monitoring Physiological Processes;

NASA Case No.: LAR–18474–1: Compound Wing Vertical Takeoff and Landing Small Unmanned Aircraft System;

NASA Case No.: LAR–18526–1: Device and Method of Scintillating Quantum Dots for Radiation Imaging;

NASA Case No.: LAR–18447–1: System and Method for Multi-Wavelength Optical Signal Detection;

NASA Case No.: LAR–17769–2: Modification of Surface Energy via Direct Laser Ablative Surface Patterning.

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2015–11969 Filed 5–15–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (15–035)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 18, 2015.

FOR FURTHER INFORMATION CONTACT: Bryan A. Geurts, Patent Counsel, Goddard Space Flight Center, Mail Code 140.1, Greenbelt, MD 20771–0001; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No.: GSC–16883–3: Meta-Material Blocking Filter with Low Geometric Inductance.

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2015–11967 Filed 5–15–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (15–033)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 18, 2015.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, Ames Research Center, Code 202A–4, Moffett Field, CA 94035–0001; telephone (650) 604–5104; fax (650) 604–2767.

NASA Case No.: ARC–16289–1: Low Burden Star Tracker;

NASA Case No.: ARC–17611–1: A System for the Analysis of Vascular Structures;

NASA Case No.: ARC–16956–1: Biologically Inspired Radiation Reflector.

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2015–11965 Filed 5–15–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (15–034)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 18, 2015.

FOR FURTHER INFORMATION CONTACT: Robert H. Earp, III, Patent Attorney, Glenn Research Center at Lewis Field, Code 21–14, Cleveland, OH 44135; telephone (216) 433–3663; fax (216) 433–6790.

NASA Case No.: LEW–19036–1: Cavity Pull Rod: Device to Promote Single Crystal Growth from the Melt;

NASA Case No.: LEW–18477–2: Polymer Nanofiber Based Reversible Nano-Switch/Sensor Schottky Diode (nanoSSSD) Device;

NASA Case No.: LEW–19022–1: Passive Feed Electrolyzer;

NASA Case No.: LEW–19058–1: Process and Apparatus for Manufacturing a Multi-Material Hybrid Turbine Disk;

NASA Case No.: LEW–19041–1: Fuel Cell Power Management;

NASA Case No.: LEW–19200–1: Polyimide Aerogels having Polyamide Cross-Links and Processes for Making the Same;

NASA Case No.: LEW–19171–1: Low Power Charged Particle Counter;

NASA Case No.: LEW–18857–1: Superparamagnetic Energy Harvesting-Hummingbird Engine;

NASA Case No.: LEW–19156–1: Multi-Phase Ceramic System.

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2015–11966 Filed 5–15–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (15–038)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 18, 2015.

FOR FURTHER INFORMATION CONTACT: James J. McGroary, Patent Counsel, Marshall Space Flight Center, Mail Code LS01, Huntsville, AL 35812; telephone (256) 544–0013; fax (256) 544–0258.

NASA Case No.: MFS–33169–1: Mechanical Stress Measurement During Thin-Film Fabrication.

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2015–11970 Filed 5–15–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (15–036)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 18, 2015.

FOR FURTHER INFORMATION CONTACT: Mark W. Homer, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–200, Pasadena, CA 91109; telephone (818) 354–7770.

NASA Case No.: NPO–49310–1: Hollow-Core Fiber Lamp;

NASA Case No.: NPO–49481–1: Lens Coupled Dielectric Waveguides.

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2015–11968 Filed 5–15–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2015–042]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: NARA must receive requests for copies in writing by June 17, 2015. Once NARA completes appraisal of the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Management Services (ACNR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it has created or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No agencies may destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after a thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records or that the schedule has agency-wide applicability (in the case of schedules that cover records that may be accumulated throughout an agency), provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction), and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending:

1. Department of the Army, Agency-wide (DAA–AU–2015–0012, 1 item, 1 temporary item). Master files of an electronic information system that contains records relating to materiel management.

2. Department of the Army, Agency-wide (DAA–AU–2015–0015, 1 item, 1 temporary item). Master files of an electronic information system used to track housing allowances for service members overseas.

3. Department of the Army, Agency-wide (DAA–AU–2015–0020, 1 item, 1 temporary item). Master files of an electronic information system used to manage maintenance and supply operations at the unit level.

4. Department of the Army, Agency-wide (DAA–AU–2015–0025, 1 item, 1 temporary item). Master files of an electronic information system that contains data used by military leaders to identify and address potential management problems.

5. Department of Health and Human Services, Office of Global Affairs (DAA–0468–2014–0005, 5 items, 2 temporary items). Records related to international partnerships to include resident requirement waiver files, country inquiry files, copies of responses, and related working files and background materials. Proposed for permanent retention are significant project files, agreements, and decisional policies.

6. Department of Homeland Security, Transportation Security Administration (DAA–0560–2013–0006, 13 items, 13 temporary items). Occupational safety program records to include safety and environmental incident and inspection reports, investigation records, hazardous waste management records, and related administrative materials.

7. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (DAA–0436–2013–0005, 2 items, 2 temporary items). Master files of an electronic information system used to collect and manage information

gathered in the investigation of reported incidents of internal misconduct.

8. Department of the Navy, Naval Nuclear Propulsion Program (DAA–0594–2015–0001, 1 item, 1 temporary item). Records relating to the operation of nuclear powered vessels including reactor logs and related reports.

9. Department of the Navy, U.S. Marine Corps (DAA–0127–2014–0010, 1 item, 1 temporary item). Master files of an electronic information system used to manage and analyze collected intelligence imagery.

10. Department of the Navy, U.S. Marine Corps (DAA–0127–2014–0020, 1 item, 1 temporary item). Master files of an electronic information system used to manage and track the care and treatment of exceptional dependants of Marine Corps personnel.

11. Department of State, Bureau of Energy Resources (DAA–0059–2014–0022, 8 items, 4 temporary items). Records of the Office of the Assistant Secretary including routine correspondence, daily activity reports, bibliographic reference files, and courtesy copies. Proposed for permanent retention are memoranda, reports, telegrams, briefing books, and the calendar of the Assistant Secretary.

12. Broadcasting Board of Governors, Agency-wide (DAA–0517–2013–0002, 8 items, 5 temporary items). Records of the International Broadcasting Bureau, Voice of America, and the Office of Cuba Broadcasting to include broadcast recordings, associated broadcast logs, records used to create programming content, and social media content. Proposed for permanent retention are historically significant broadcast recordings and associated broadcast logs.

13. Central Intelligence Agency, Agency-wide (N1–263–15–1, 1 item, 1 temporary item). Records related to incentive, achievement, and certification awards of employees.

14. Court Services and Offenders Supervision Agency for the District of Columbia, Office of the General Counsel (DAA–0562–2013–0005, 14 items, 13 temporary items). Legal records to include legal opinion reviews related to specific cases, investigations, or ethics violations, and routine claims and litigation files. Proposed for permanent retention are general legal opinion reviews.

15. Environmental Protection Agency, Agency-wide (DAA–0412–2013–0011, 4 items, 4 temporary items). Administrative records related to the day-to-day activities of agency program offices, including reading files, mailing lists, and other short-term transitory records.

Dated: May 7, 2015.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2015–11927 Filed 5–15–15; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to the Office of Management and Budget (OMB) for Revision to a Currently Approved Information Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: National Credit Union Administration (NCUA).

ACTION: 30-day notice of submission of information collection approval from OMB and request for comment.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, NCUA intends to amend and submit the Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to the OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et. seq.). The purpose of this notice is to allow for 30 days of public comment.

DATES: Comments will be accepted until June 17, 2015

ADDRESSES: Interested persons are invited to submit comments to:

(i) Desk Officer for the National Credit Union Administration, 3133–0188, U.S. Office of Management and Budget, 725 17th Street NW., #10102, Washington, DC 20503, or by email to: *oirasubmission@omb.eop.gov;* and

(ii) Jessica Khouri by mail at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, by fax at Fax No. 703–837–2861, or by email at *OCIOPRA@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Jessica Khouri by mail at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, by fax at Fax No. 703–837–2861, or by email at *OCIOPRA@ncua.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is requesting comments on this proposed amendment to the current collection 3133–0188, ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' The proposed amendment intends to increase the hours available to obtain feedback on services provided by NCUA offices. NCUA anticipates using a variety of methods to collect customer satisfaction feedback from credit unions, including, but not limited to, web and paper-based surveys or feedback forms, web-based polling or other interactive responses, comment cards, and social media. The information collection activity will garner qualitative stakeholder feedback in an efficient, timely manner, in accordance with NCUA's commitment to improving service delivery. Qualitative feedback is information that provides useful insights on perceptions and opinions, but is not a statistical survey that yields quantitative results that can be generalized to the population of study. This feedback will provide insights into stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between NCUA and its stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely

to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The NCUA received no comments related to this collection in response to the 60-day notice and request for comment published in the **Federal Register** on January 22, 2015 (80 FR 3255).

The NCUA requests that you send your comments on this collection to the locations listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 3133–0188.

Form Number: None.

Type of Review: Amendment of a currently approved collection.

Description: The information collection activity will garner qualitative stakeholder feedback in an efficient, timely manner, in accordance with NCUA's commitment to improving service delivery. Feedback will include, but is not limited to, web- and paper-based surveys or feedback forms, web-based polling or other interactive responses, comment cards, and social media.

Respondents: Non-Profit Institutions, Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated No. of Respondents/Recordkeepers: 51,900.

Frequency of Response: Varies.

Estimated Burden Hours per Response: Varies, depending on feedback method.

Estimated Total Annual Burden Hours: 42,715.

Estimated Total Annual Cost: 0.

By the National Credit Union Administration Board on May 13, 2015.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2015–12003 Filed 5–15–15; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act: Notice of Agency Meeting

TIME AND DATE: 10:00 a.m., Thursday, May 21, 2015.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open,

MATTERS TO BE CONSIDERED:

1. Corporate Stabilization Fund Quarterly Report.

RECESS: 10:20 a.m.

TIME AND DATE: 10:30 a.m., Thursday, May 21, 2015

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed,

MATTERS TO BE CONSIDERED:

1. Consideration of Supervisory Action under NCUA's Rules and Regulations. Closed pursuant to Exemption (8).

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2015–12071 Filed 5–14–15; 4:15 pm]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0001]

Sunshine Act Meeting Notice

DATE: May 18, 25, June 1, 8, 15, 22, 2015.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of May 18, 2015

Tuesday, May 19, 2015

9:00 a.m. Briefing on Cumulative Effects of Regulation and Risk Prioritization Initiatives (Public Meeting); (Contact: Steve Ruffin, 301–415–1985)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, May 21, 2015

9:00 a.m. Briefing on the Results of the Agency Action Review Meeting (Public Meeting); (Contact: Nathan Sanfilippo, 301–415–8744)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of May 25, 2015—Tentative

There are no meetings scheduled for the week of May 25, 2015.

Week of June 1, 2015—Tentative

There are no meetings scheduled for the week of June 1, 2015.

Week of June 8, 205—Tentative

Tuesday, June 9, 2015

9:30 a.m. Briefing on NRC Insider Threat Program (Closed—Ex. 1 & 2)

Thursday, June 11, 2015

10:00 a.m. Meeting with the Advisory Committee on Reactor Safeguards (Public Meeting); (Contact: Edwin Hackett, 301–415–7360)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of June 15, 2015—Tentative

There are no meetings scheduled for the week of June 15, 2015.

Week of June 22, 2015—Tentative

Tuesday, June 23

9:00 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting); (Contact: Dafna Silberfeld, 301–287–0737)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, June 25, 2015

9:00 a.m. Briefing on Proposed Revisions to Part 10 CFR part 61 and Low-Level Radioactive Waste Disposal (Public Meeting); (Contact: Gregory Suber, 301–415–8087)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Glenn Ellmers at 301–415–0442 or via email at *Glenn.Ellmers@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: May 13, 2015.

Glenn Ellmers,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2015–12044 Filed 5–14–15; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–67; Order No. 2479]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Plus 2C negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 19, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On May 11, 2015, the Postal Service filed notice that it has entered into an additional Global Plus 2C negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2015–67 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than May 19, 2015. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Cassie D'Souza to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–67 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Cassie D'Souza is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than May 19, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–11861 Filed 5–15–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–66; Order No. 2478]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Plus 1C negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 19, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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The Commission appoints Kenneth R. Moeller to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–66 for consideration of the

[1] Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 2C Contract Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, May 11, 2015 (Notice).

[1] Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, May 11, 2015 (Notice).

matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than May 19, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–11860 Filed 5–15–15; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74931; File No. SR–NASDAQ–2015–047]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NASDAQ Options Market Fees and Rebates

May 12, 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 29, 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, II, and III, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to amend the Exchange's transaction fees at Chapter XV, Section 2 entitled ''NASDAQ Options Market—Fees and Rebates,'' which governs pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on May 1, 2015.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Penny Pilot Options[3] Rebates to Add Liquidity for Customers[4] and Professionals.[5] Today, the Exchange pays Customers and Professionals a Penny Pilot Options Rebate to Add Liquidity based on the following tiered rebate structure:

Monthly volume	Rebate to add liquidity
Tier 1 Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option average daily volume (''ADV'') contracts per day in a month.	$0.20.
Tier 2 Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month.	$0.25.
Tier 3 Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month.	$0.42.
Tier 4 Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month.	$0.43.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 is currently expanded and extended through June 30, 2015. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009)(SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR–NASDAQ–2011–169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR–NASDAQ–2012–075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR–NASDAQ–2012–143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013); 69787 (June 18, 2013), 78 FR 37858 (June 24, 2013) (SR–NASDAQ–2013–082) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2013); 71105 (December 17, 2013), 78 FR 77530 (December 23, 2013) (SR–NASDAQ–2013–154) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2014); 79 FR 31151 (May 23, 2014), 79 FR 31151 (May 30, 2014) (SR–NASDAQ–2014–056) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2014); and 73686 (December 2, 2014), 79 FR 71477 (November 25, 2014) (SR–NASDAQ–2014–115) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2015). *See also* NOM Rules, Chapter VI, Section 5.

[4] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48)).

[5] The term ''Professional'' or (''P'') 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) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

Monthly volume	Rebate to add liquidity
Tier 5 Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014, and (3) the Participant executed at least one order on NASDAQ's equity market.	$0.45.
Tier 6 Participant has Total Volume of 100,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options.	$0.45.
Tier 7 Participant has Total Volume of 150,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options.	$0.47.
Tier 8 Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month.	$0.48 (Customer) and $0.47 (Professional).

The Exchange is proposing to amend Tier 5 of the Customer and Professional Penny Pilot Options Rebate to Add Liquidity which currently pays a $0.45 per contract rebate if Participant adds Customer, Professional, Firm,[6] Non-NOM Market Maker[7] and/or Broker-Dealer[8] liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014, and (3) the Participant executed at least one order on NASDAQ's equity market. The Exchange proposes to continue to pay a $0.45 per contract rebate, but amend the qualifier to apply to a Participant that adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.40% *to 0.75%* of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange is proposing this amendment to distinguish the Tier 5 qualification from the qualification for Tier 8 of the Penny Pilot Rebates for Customers and Professionals.

Additionally, the Exchange is proposing to amend Tier 8 of the Customer and Professional Penny Pilot Options Rebate to Add Liquidity which currently pays a $0.48 per contract rebate to Customers and a $0.47 per contract rebate to Professionals if Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange proposes to amend the rebate to $0.48 per contract for Professionals, thereby increasing the Professional Tier 8 rebate from $0.47 to $0.48 per contract if the Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options *above* 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month *or Participant adds (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program*[9] *set forth in Rule 7014, and (3) the Participant qualifies for rebates under the Qualified Market Maker (''QMM'') Program*[10] *set forth in Rule 7014.* Customers will continue to receive the $0.48 per contract rebate. The Exchange is offering Participants additional avenues to qualify for the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity in different ways with this proposed rule change.

With respect to Tier 8, Participants that qualify for Tier 8 will continue to be eligible to be assessed a Professional, Firm, Non-NOM Market Maker, NOM Market Maker or Broker-Dealer Fee for Removing Liquidity in Penny Pilot Options of $0.48 per contract and a Customer Fee for Removing Liquidity in Penny Pilot Options of $0.47 per contract.[11] Also, with respect to Tier 8, Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 1.25% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.02 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month.[12]

The Exchange is not amending the Penny Pilot Options Rebate to Add Liquidity for any other market participant.

Finally, the Exchange is proposing to amend note ''a'' to attribute it to Tier 8 and amend the text of note ''a'' to add Tier 8 as well. The Exchange's proposal to qualify for Tier 8 will include certification in the Investor Support Program which is further explained in note ''a.'' The Exchange is also proposing to remove the reference to note ''b'' in Tier 8 as the definition of

[6] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

[7] The term ''NOM Market Maker'' or (''M'') is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[8] The term ''Broker-Dealer'' or (''B'') applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[9] For a detailed description of the ISP, *see* Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ–2010–141) (notice of filing and immediate effectiveness) (the ''ISP Filing''). *See also* Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ–2010–153) (notice of filing and immediate effectiveness); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ–2010–154) (notice of filing and immediate effectiveness).

[10] A QMM is a NASDAQ member that makes a significant contribution to market quality by providing liquidity at the national best bid and offer (''NBBO'') in a large number of stocks for a significant portion of the day. In addition, the NASDAQ equity member must avoid imposing the burdens on NASDAQ and its market participants that may be associated with excessive rates of entry of orders away from the inside and/or order cancellation. The designation ''QMM'' reflects the QMM's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities. In return for its contributions, certain financial benefits are provided to a QMM with respect to a particular MPID (a ''QMM MPID''), as described under Rule 7014(e).

[11] *See* note ''d'' in Chapter XV, Section 2.

[12] *See* note ''e'' in Chapter XV, Section 2.

Total Volume is not utilized in Tier 8 and this reference is unnecessary.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[14] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposal to amend the Tier 5 Customer and Professional Penny Pilot Options Rebate to Add Liquidity is reasonable because the Exchange seeks to cap the current qualifying volume for the Tier 5 rebate to coincide with the amendment to the Tier 8 rebate, which would apply to Participants with similar volume over 0.75% of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange desires to continue to encourage Participants to add more liquidity on NOM. The Tier 5 rebate requires Participants to add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity to obtain the $0.45 per contract rebate. The Exchange will continue to require Participants to add such liquidity above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange is adding the qualifier that the liquidity for this Tier 5 is above 0.40% to *0.75%* of total industry customer equity and ETF option ADV contracts per day in a month.[15] The Exchange desires to incentivize Participants to continue to add liquidity to NOM.

The Exchange's proposal to amend the Tier 5 Customer and Professional Penny Pilot Options Rebate to Add Liquidity is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 5 Customer and Professional Penny Pilot Options Rebate to Add Liquidity will be uniformly paid the rebate. The Exchange will continue to pay all Participants a $0.45 per contract rebate that qualify for the Tier 5 rebate based on the new tier qualifications. All Participants are eligible for the Tier 5 rebate, provided they transact the requisite volume.

The Exchange's proposal to amend the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity is reasonable because the Exchange seeks to first adjust the volume level for liquidity to *above* 0.75% to account for the modification to the Tier 5 volume which is up to 0.75% of total industry customer equity and ETF option ADV contracts per day in a month. Any similar volume more than 0.75% would therefore qualify for the Tier 8 Customer or Professional Penny Pilot Options Rebate to Add Liquidity.

The Exchange's proposal to expand the qualifier for the Tier 8 Customer or Professional Rebate to Add Liquidity to offer the rebate to Participants that add (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014, and (3) the Participant qualifies for rebates under the Qualified Market Maker (''QMM'') Program set forth in Rule 7014 will provide additional opportunities for Participants to qualify for this rebate. The Exchange offers similar incentives such as these today to qualify for the Tier 5 rebate. The Exchange proposes to similarly incentivize Participants to add even more Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options (30,000 vs. 25,000 contracts), and also continues to offer opportunities to participate in the equities market as a means of qualifying for the Tier 8 rebate.

Today, Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month are paid a $0.48 per Customer Rebate to Add Liquidity in Penny Pilot Options and a $0.47 per contract Professional Rebate to Add Liquidity in Penny Pilot Options. This proposal would provide Participants with additional opportunities to earn the same Customer rebate and an increased Professional rebate of $0.48 per contract (increase from today's $0.47 per rebate). The Exchange believes that offering these opportunities to earn the Tier 8 rebate will encourage Participants to add liquidity to NOM. It is also reasonable to pay the same Tier 8 rebate of $0.48 per contract for Customer and Professionals as the qualifiers for this rebate are the same.[16]

The Exchange's proposal to amend the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity will be uniformly paid the rebate. The Exchange will pay Customers and Professionals alike a $0.48 per contract rebate that qualify for the Tier 8 rebate based on the existing and new tier qualifications. Further, all Participants may qualify to be eligible for these rebates, provided they transact the requisite amount of liquidity. Customer liquidity offers unique benefits to the market which benefits all market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that encouraging Participants to add Professional liquidity creates competition among options exchanges because the Exchange believes that the rebates may cause market participants to select NOM as a venue to send Professional order flow.

Finally, the Exchange believes that the Exchange's proposal to amend note ''a'' to attribute it to Tier 8 and amend the text of note ''a'' to add Tier 8 as well is reasonable, equitable and not unfairly discriminatory because the Exchange desires to further explain what qualifies for inclusion in the Investor Support Program and provide Participants with clarity as to the fees. The Exchange's proposal to remove the reference to note ''b'' in Tier 8 is reasonable, equitable and not unfairly discriminatory as the definition of Total Volume is not utilized in Tier 8 and this reference is unnecessary.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] The Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity has a qualifier with volume above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month. Any volume more than 0.75% would therefore qualify for the Tier 8 Customer or Professional Penny Pilot Options Rebate to Add Liquidity.

[16] Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.25% or more of total industry customer equity and ETF option ADV contracts per day in a month will continue to receive an additional $0.02 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month.

purposes of the Act. The Exchange believes that amending the Tier 5 rebate to cap the volume at 0.75% of total industry customer equity and ETF option ADV contracts per day in a month and amending Tier 8 for volume above 0.75% of total industry customer equity and ETF option ADV contracts per day in a month will clarify which volume tier a Participant qualifies for when adding Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options.

Additionally, the Exchange is proposing to add additional qualifiers for the Tier 8 rebate. Both the Tier 5 and 8 rebates permit Participants to add all types of market participant liquidity to qualify for the rebate. This proposal does not create an undue burden on competition, rather the proposal will incentivize market participants to add greater liquidity on NOM. Customer liquidity offers unique benefits to the market which benefits all market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that encouraging Participants to add Professional liquidity creates competition among options exchanges because the Exchange believes that the rebates may cause market participants to select NOM as a venue to send Professional order flow. The Exchange is offering to pay increased rebates in exchange for additional Professional order flow being executed at the Exchange, which additional order flow should benefit other market participants. Further, all Participants are eligible for the Customer and Professional rebates, provided they transact the requisite volume.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. These market forces support the Exchange belief that the proposed rebate structure and tiers proposed herein are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace continues to impact the rebates present on the Exchange today and substantially influences the proposals set forth above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[17] 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–NASDAQ–2015–047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–047. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–047 and should be submitted on or before June 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11873 Filed 5–15–15; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74929; File No. SR–NYSEArca–2015–33]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Constituent Documents of Its Intermediate Parent Companies NYSE Holdings LLC., Intercontinental Exchange, Inc., to Eliminate Certain Provisions That by Their Terms Have Become Void and Are of No Further Force and Effect as a Result of the Sale by ICE of Euronext N.V. in June 2014 and Make Conforming Changes to the Independence Policy of the Board of Directors of ICE

May 12, 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 1, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 the constituent documents of its intermediate parent companies NYSE Holdings LLC, a Delaware limited liability company (''NYSE Holdings''), and Intercontinental Exchange Holdings, Inc., a Delaware corporation (''ICE Holdings''), and its ultimate parent company, Intercontinental Exchange, Inc., a Delaware corporation (''ICE''), to eliminate certain provisions that by their terms have become void and are of no further force and effect as a result of the sale by ICE of Euronext N.V. (''Euronext'') in June 2014. NYSE Arca also seeks approval of conforming changes to the Independence Policy of the Board of Directors of ICE (the ''Independence Policy''). 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

NYSE Arca requests approval to amend the constituent documents of its intermediate parent companies NYSE Holdings and ICE Holdings, and of its ultimate parent company, ICE, to eliminate certain provisions that by their terms have become void and are of no further force and effect as a result of the sale by ICE of Euronext in June 2014, upon consummation of which ICE, ICE Holdings and NYSE Holdings ceased to control Euronext.[3] NYSE Arca also requests approval of conforming changes to the Independence Policy.[4]

NYSE Arca believes the proposed changes are desirable to avoid the potential for confusion that could arise if ICE, ICE Holdings and NYSE Holdings were to retain in their constituent documents or in the Independence Policy provisions that are no longer operative.

Background

In 2007, NYSE Arca's direct parent, NYSE Group Inc. (''NYSE Group''), entered into a business combination transaction with Euronext N.V. (''Euronext'') in which NYSE Group and Euronext became wholly owned subsidiaries of a newly formed company, NYSE Euronext, a Delaware corporation. The Certificate of Incorporation and Bylaws of NYSE Euronext included provisions (a) requiring NYSE Euronext and its board of directors to give due consideration to requirements of European law and regulation applicable to the operation of Euronext's European business; (b) requiring NYSE Euronext and its board of directors to cause Euronext's subsidiaries to operate in compliance with applicable law and regulation and to cooperate with European regulators; (c) relating to board compositions and similar matters; and (d) prohibiting the amendment of such provisions without a supermajority vote of the directors in light of Euronext's minority representation on the board (collectively, the ''European Provisions''). NYSE Euronext's Certificate of Incorporation and Bylaws also included provisions for the automatic suspension or voiding of the European Provisions under specified circumstances, including circumstances under which NYSE Euronext no longer exercised a controlling interest (as therein defined) over Euronext (the ''Voiding Provisions'').[5]

In 2013, ICE Holdings (then known as IntercontinentalExchange, Inc.) entered into a business combination transaction with NYSE Euronext in which ICE Holdings and NYSE Holdings (then known as NYSE Euronext Holdings LLC), as successor to NYSE Euronext, became wholly owned subsidiaries of a newly formed company, ICE (then known as IntercontinentalExchange Group, Inc.). In connection with this transaction, the European Provisions and the Voiding Provisions were modified as they applied to NYSE Holdings and were incorporated, in substantially the same modified form, into the Certificate of Incorporation and Bylaws of ICE, along with the Voiding Provisions. In relevant part, the Voiding Provisions applicable to ICE and NYSE Holdings were modified to specify that the European Provisions would automatically become void and be of no further force and effect if at any time ICE or NYSE Holdings, as the case may be, ceased to ''control'' Euronext, with ''control'' defined under International Financial Reporting Standard 10 (as in force at its date of first effectiveness on January 1, 2014), and with cessation of control subject to confirmation from the entity's registered public accountants and to a public disclosure requirement.[6]

In March 2014, in preparation for its announced plan to sell Euronext, ICE contributed its ownership of NYSE Holdings to ICE Holdings, and in connection therewith the Certificate and Bylaws of ICE Holdings were amended to incorporate the modified European Provisions and the modified Voiding Provisions.[7] The Certificate of Incorporation and Bylaws of ICE and of ICE Holdings, and the Limited Liability Company Agreement of NYSE Holdings are referred to collectively as the ''Constituent Documents''.

In June 2014, ICE consummated the sale of substantially all of its interest in Euronext and, accordingly, ceased to control Euronext within the meaning of the Voiding Provisions. As a result, the Voiding Provisions in each of the Constituent Documents were triggered, and the European Provisions in the Constituent Documents automatically

[3] ICE, a public company listed on the New York Stock Exchange (''NYSE''), owns 100% of ICE Holdings, which in turn owns 100% of NYSE Holdings. Through ICE Holdings, NYSE Holdings and NYSE Group, Inc., ICE indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the ''NYSE Exchanges'')—NYSE, NYSE Arca and NYSE MKT LLC (''NYSE MKT'')—and (2) 100% of the equity interest of NYSE Market (DE), Inc., NYSE Regulation, Inc., NYSE Arca L.L.C. and NYSE Arca Equities, Inc. ICE also indirectly owns a majority interest in NYSE Amex Options LLC. *See* Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE–2013–42; SR–NYSEMKT–2013–50; SR–NYSEArca-2013–62) (''Release No. 70210'') (approving proposed rule change relating to a corporate transaction in which NYSE Euronext will become a wholly owned subsidiary of IntercontinentalExchange Group, Inc.).

[4] NYSE Arca's affiliates NYSE and NYSE MKT have also submitted the same proposed rule change. *See* SR–NYSEMKT–2015–32 and SR–NYSE–2015–18.

[5] *See* Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (Feb. 22, 2007) (SR–NYSE–2006–120).

[6] *See* Exchange Act Release No. 70210, 78 FR at 51758.

[7] *See* Exchange Act Release No. 71721 (Mar. 13, 2014), 79 FR 15367 (Mar. 19, 2014) (SR–NYSE–2014–04; SR–NYSEMKT–2014–10; SR–NYSEArca–2014–08).

became void and are of no further force and effect.[8]

NYSE Arca accordingly proposes to make the following changes to the constituent documents of ICE, ICE Holdings and NYSE Holdings:

Certificate of Incorporation of ICE. The Amended and Restated Certificate of Incorporation of ICE would be further amended and restated as set forth in Exhibit 5A to update the recitals in the initial certification and to eliminate the following provisions, which have become void and without further force and effect by operation of the indicated section because ICE no longer controls Euronext:

- Pursuant to Art. XIII, Section A.2., the following provisions are void and would be deleted: Art. V, Section A.2.(d); Art. V, Section A.3.(a)(ii), (a)(iii)(z), (b)(ii), (c)(i)(y) and (d)(i)(y); Art. V, Section A.4.(b), A.8, A.9, A.10 and A.11; Art. V, Section B.2.(d); Art. V, Section B.3.(a)(ii), (a)(iii)(z), (b)(ii), (b)(y) and (c)(ii); Art. VII, clause (B); and Art. X, clause (B).
- In addition, the phrases ''or any European Market Subsidiary (as defined below)'' has been deleted from Art V, Section A.1., and the phrase ''or any European Market Subsidiary'' has been deleted from Art. V, Section B.1., in each case because the phrase refers to a term that is no longer used in the document.
- In Art. V, Section A.3.(a)(i), a reference has been added to ICE Holdings and the erroneous name NYSE Euronext LLC has been corrected to refer to NYSE Holdings LLC. Additionally, references to ICE Holdings and NYSE Holdings have been added to Art. V, Section B.3.(a)(i). These matters were previously addressed in the last sentence of Section 3.15(g) of the Bylaws of ICE.
- Art. XIII itself is deleted because its sole purpose was to define the circumstances under which ICE would no longer control Euronext and to specify the provisions that became void upon such event. NYSE Arca believes it would be confusing to retain Art. XIII because it refers to events that have occurred and to provisions that will have been deleted.
- Art. XIV, establishing an effective time for the document, has been deleted because the effective time is addressed in the initial certification.

Bylaws of ICE. The Fourth Amended and Restated Bylaws of ICE would be further amended and restated as set forth in Exhibit 5B to eliminate the following provisions, which have become void and without further force and effect by operation of the indicated section because ICE no longer controls Euronext:

- Pursuant to Section 10.9(b)(3), the following provisions are void and would be deleted: Sections 3.14(a)(1), 3.14(b)(2), 3.14(b)(4), 3.14(b)(6), 7.2, 8.1(b), 8.2(b), 8.2(c)(2), 8.3(b), 8.3(d), 8.5, 9.2, 9.5, and 10.8; each occurrence of the words ''pursuant to a resolution adopted by at least 75% of the directors then in office'' in Section 3.1; and additionally Sections 3.15(a), 3.15(b), 3.15(c), 3.15(d), 3.15(e), 3.15(f), 11.1(b), 11.2(b) and 11.3(A).
- In Section 3.1, where the reference to 75% of the directors then in office is eliminated, the standard for setting the number of directors is set to a majority of the directors then in office, which was the standard in effect at NYSE Group prior to the Euronext transaction in 2007.
- In Section 3.5, a provision calling for one board meeting to be held in Europe in each year is deleted. This provision was included to accommodate the interests of the Euronext-affiliated directors and, while it was not identified for automatic deletion, ICE views the requirement as imposing an unnecessary expense on ICE and believes the venue of meetings should be in the discretion of management.
- The last sentence of Section 3.15(g) (which will be redesignated Section 3.15) is deleted for the reasons discussed above under ''Certificate of Incorporation of ICE''.
- Section 8.6, applicable to records that relate to both a European Market Subsidiary and a U.S. Regulated Subsidiary, has been deleted because the definition of European Market Subsidiary and all other references to the term have been deleted.
- Section 10.9 is deleted in its entirety for the reasons set forth above relating to Article XIII of the Certificate of Incorporation of ICE, and also because Section 10.9 refers to Stichting NYSE Euronext and its Articles of Formation, which no longer asserts any authority over ICE.[9]

Independence Policy. The Independence Policy would be revised to eliminate from paragraph 3 the references to European securities exchanges and European regulatory authorities that are no longer controlled by, or regulators of entities controlled by, ICE. *See* Exhibit 5C.

Certificate of Incorporation of ICE Holdings. The Sixth Amended and Restated Certificate of Incorporation of ICE Holdings would be further amended and restated as set forth in Exhibit 5D to update the recitals in the initial certification and to eliminate the following provisions, which have become void and without further effect by operation of the indicated section because ICE Holdings no longer controls Euronext:

- Pursuant to Art. XIII, Section A.2., the following provisions are void and would be deleted: Art. V, Section A.2.(d); Art. V, Section A.3.(a)(ii), (a)(iii)(z), (b)(ii), (c)(i)(y) and (d)(i)(y); Art. V, Section A.4.(b), A.8, A.9, A.10 and A.11; Art. V, Section B.2.(d); Art. V, Section B.3.(a)(ii), (a)(iii)(z), (b)(ii), (b)(y) and (c)(ii); Art. VII, clause (B); and Art. X, clause (B).
- In addition, the phrases ''or any European Market Subsidiary (as defined below)'' has been deleted from Art V, Section A.1., and the phrase ''or any European Market Subsidiary'' has been deleted from Art. V, Section B.1., in each case because the phrase refers to a term that is no longer used in the document.
- Art. XIII itself is deleted for the same reasons as discussed above for ICE.

Bylaws of ICE Holdings. The Third Amended and Restated Bylaws of ICE Holdings would be further amended and restated as set forth in Exhibit 5E to eliminate the following provisions, which have become void and without further force and effect by operation of the indicated section because ICE Holdings no longer controls Euronext:

- Pursuant to Section 10.9(b)(3), the following provisions are void and would be deleted: Sections 3.14(a)(1), 3.14(b)(2), 3.14(b)(4), 3.14(b)(6), 7.2, 8.1(b), 8.2(b), 8.2(c)(2), 8.3(b), 8.3(d), 8.5, 9.2, 9.5, and 10.8; each occurrence of the words ''pursuant to a resolution adopted by at a majority of the directors then in office'' in Section 3.1; and additionally Sections 3.15(a), 3.15(b), 3.15(c), 3.15(d), 3.15(e), 3.15(f), 11.1(b), 11.2(b) and 11.3(A).
- In Section 3.5, a provision calling for one board meeting to be held in Europe in each year is deleted, for the reasons discussed above under ''Bylaws of ICE.''
- Section 8.6 is deleted for the reasons discussed above under ''Bylaws of ICE''.
- Section 10.9 is deleted in its entirety for the reasons set forth above under ''Bylaws of ICE''.

Limited Liability Company Agreement of NYSE Holdings. The Sixth Amended and Restated Limited Liability Company

[8] *See* Exchange Act Release No. 73740 (Dec. 4, 2014), 79 FR 73362 (Dec. 10, 2014) (''Release No. 73740'') (SR–NYSE–2014–53; SR–NYSEMKT–2014–83; SR–NYSEArca–2014–112), for additional information about the events that resulted in the triggering of the Voiding Provisions.

[9] *See* Release No. 73740, 79 FR at 73362 and note 9, *supra.*

Agreement of NYSE Holdings would be further amended and restated as set forth in Exhibit 5F to update the recitals and to eliminate the following provisions, which have become void and without further force and effect by operation of the indicated section because NYSE Holdings no longer controls Euronext:

• Pursuant to Section 16.3(b)(3), the following provisions are void and would be deleted: Sections 3.12(b)(1), 3.12(c)(2), 3.12(c)(4), 3.12(c)(6),[10] 12.1(b), 12.2(b), 12.2(c)(ii), 12.3(b), 12.3(d), 12.4(b), 13.2, 14.2, 14.5, and 16.2; and, additionally, Sections 4.1(b), 9.1(a)(2)(d), 9.1(a)(3)(A)(ii), 9.1(a)(3)(A)(iii)(z), 9.1(a)(3)(B)(ii), 9.1(a)(3)(C)(i)(y), 9.1(a)(3)(D)(i)(y),[11] 9.1(a)(4)(b),[12] 9.1(b)(2)(d), 9.1(b)(3)(A)(ii), 9.1(b)(3)(A)(iii)(z), 9.1(b)(3)(B)(ii), 9.1(b)(3)(B)(y), 9.1(b)(3)(C)(ii), 16.1(a)(A) and 16.1(b), and the definitions of ''Euronext College of Regulators'', ''European Exchange Regulations'', ''European Regulated Market'', ''European Regulator'', ''European Market Subsidiary'' and ''Europe'' set forth in Section 1.1.

• Additional definitions that define terms no longer used in the document also are deleted from Section 1.1: ''Euronext'', ''Euronext Call Option'', ''Euronext Transaction Time'', ''European Disqualified Person'', ''European Subsidiaries' Confidential Information'', ''Execution Date'', ''Extraordinary Transaction'', ''Foundation'', ''Governmental Entity'' (and the reference to such term in the definition of ''Law''), ''Merger'' and ''Priority Shares''.

• Certain cross-references have been corrected in the definitions of ''ETP Holder'', ''MKT Member'', ''NYSE Arca'', ''NYSE Arca Equities'', ''NYSE Market'', ''NYSE Member'', ''NYSE MKT'', ''OTP Firm'', ''OTP Holder'' and ''U.S. Disqualified Person''.

• In Section 3.7, a provision calling for one board meeting to be held in Europe in each year is deleted for the reasons discussed above under ''Bylaws of ICE''.

• References to European filing requirements have been eliminated from Section 7.2.

• Section 12.4(c), applicable to records that relate to both a European Market Subsidiary and a U.S. Regulated Subsidiary, has been deleted for the reasons discussed above under ''Bylaws of ICE,'' Section 8.6.

• Section 16.3 itself is deleted for the reasons discussed under ''Certificate of Incorporation of ICE'' with reference to Art. XIII.

• The phrase ''or any European Market Subsidiary'' has been eliminated from Sections 9.1(a)(1) and 9.1(b)(1), in each case because the phrase refers to a term that is no longer used in the document.

In each case, where a provision being eliminated falls within a numbered or lettered list, the subsequent numbers or letters, as the case may be, and related cross-references have been adjusted for continuity. In some cases where a list contains only a small number of items after eliminations, the number or lettering has been removed entirely.

Other non-substantive conforming changes have been made as appropriate for clarity and consistency.

2. Statutory Basis

NYSE Arca believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act [13] in general, and with Section 6(b)(1) [14] in particular, in that it enables NYSE Arca to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of NYSE Arca. The European Provisions were implemented at a time when NYSE Arca was owned by a company with substantial holdings of non-U.S. securities exchanges, substantial non-U.S. board representation, and explicit obligations on the part of its board to give due consideration to matters of non-U.S. law and the interests of non-U.S. stakeholders. In light of the elimination of these concerns and the concomitant voiding of the European Provisions, NYSE Arca believes that the proposed rule change is consistent with Section 6(b)(1).

NYSE Arca also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act [15] because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. NYSE Arca believes that elimination of the European Provisions (which by their terms are now void and of no further force and effect) will remove impediments to the operation of NYSE Arca by eliminating the potential for uncertainty among analysts and investors as to the practical implications of the European Provisions on NYSE Arca as a marketplace and as a significant asset of ICE if they remain in the Constituent Documents notwithstanding their vitiation by the Voiding Provisions. For the same reasons, the proposed rule change is also designed to protect investors as well as the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Arca 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 Exchange Act. The proposed rule change would shorten and simplify the Constituent Documents and the ICE Directors Independence Policy without making any substantive changes, thereby enhancing their transparency. The proposed rule change would result in no concentration or other changes of ownership of exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17] Because the foregoing 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

[10] The four subsections of Section 3.12 are mistakenly identified in Section 16.3(a) as subsections of Section 3.11.

[11] Sections 9.1(a)(3)(B)(ii), 9.1(a)(3)(C)(i)(y) and 9.1(a)(3)(D)(i)(y) are mistakenly identified in Section 16.3 as subsections of Section 9.1(c)(3) rather than Section 9.1(a)(3).

[12] Section 9.1(a)(4)(b) is mistakenly identified in Section 16.3 as a subsection of Section 9.1(c)(4) rather than Section 9.1(a)(4).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(1).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [19] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that such waiver would accommodate the timing of the effectiveness under the Delaware General Corporation Law of the Second Amended and Restated Certificate of Incorporation of ICE, which the Exchange represents will be filed in Delaware upon approval by the stockholders of ICE at the annual meeting of stockholders scheduled for May 2015. The Exchange believes that waiving the 30-day operative delay would permit the modifications to occur at an earlier time and thereby reduce the potential for confusion among persons reading the Constituent Documents. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change 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.

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission 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. The Exchange has satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2015–33 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–2015–33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–33, and should be submitted on or before June 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11871 Filed 5–15–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74930; File No. SR–NYSEMKT–2015–32]

Self-Regulatory Organizations; NYSE MKT, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Constituent Documents of Its Intermediate Parent Companies NYSE Holdings, LLC., Intercontinental Exchange, Inc., To Eliminate Certain Provisions That by Their Terms Have Become Void and Are of No Further Force and Effect as a Result of the Sale by ICE of Euronext N.V. in June 2014 and Make Conforming Changes to the Independence Policy of the Board of Directors of ICE

May 12, 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 1, 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 the constituent documents of its intermediate parent companies NYSE Holdings LLC, a Delaware limited liability company (''NYSE Holdings''), and Intercontinental Exchange Holdings, Inc., a Delaware corporation (''ICE Holdings''), and its ultimate parent company, Intercontinental Exchange, Inc., a Delaware corporation (''ICE''), to eliminate certain provisions that by their terms have become void and are of no further force and effect as a result of the sale by ICE of Euronext N.V. (''Euronext'') in June 2014. NYSE MKT also seeks approval of conforming

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

changes to the Independence Policy of the Board of Directors of ICE (the ''Independence Policy''). 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

NYSE MKT requests approval to amend the constituent documents of its intermediate parent companies NYSE Holdings and ICE Holdings, and of its ultimate parent company, ICE, to eliminate certain provisions that by their terms have become void and are of no further force and effect as a result of the sale by ICE of Euronext in June 2014, upon consummation of which ICE, ICE Holdings and NYSE Holdings ceased to control Euronext.[3] NYSE MKT also requests approval of conforming changes to the Independence Policy.[4]

NYSE MKT believes the proposed changes are desirable to avoid the potential for confusion that could arise if ICE, ICE Holdings and NYSE Holdings were to retain in their constituent documents or in the Independence Policy provisions that are no longer operative.

Background

In 2007, NYSE MKT's direct parent, NYSE Group Inc. (''NYSE Group''), entered into a business combination transaction with Euronext N.V. (''Euronext'') in which NYSE Group and Euronext became wholly owned subsidiaries of a newly formed company, NYSE Euronext, a Delaware corporation. The Certificate of Incorporation and Bylaws of NYSE Euronext included provisions (a) requiring NYSE Euronext and its board of directors to give due consideration to requirements of European law and regulation applicable to the operation of Euronext's European business; (b) requiring NYSE Euronext and its board of directors to cause Euronext's subsidiaries to operate in compliance with applicable law and regulation and to cooperate with European regulators; (c) relating to board compositions and similar matters; and (d) prohibiting the amendment of such provisions without a supermajority vote of the directors in light of Euronext's minority representation on the board (collectively, the ''European Provisions''). NYSE Euronext's Certificate of Incorporation and Bylaws also included provisions for the automatic suspension or voiding of the European Provisions under specified circumstances, including circumstances under which NYSE Euronext no longer exercised a controlling interest (as therein defined) over Euronext (the ''Voiding Provisions'').[5]

In 2013, ICE Holdings (then known as IntercontinentalExchange, Inc.) entered into a business combination transaction with NYSE Euronext in which ICE Holdings and NYSE Holdings (then known as NYSE Euronext Holdings LLC), as successor to NYSE Euronext, became wholly owned subsidiaries of a newly formed company, ICE (then known as IntercontinentalExchange Group, Inc.). In connection with this transaction, the European Provisions and the Voiding Provisions were modified as they applied to NYSE Holdings and were incorporated, in substantially the same modified form, into the Certificate of Incorporation and Bylaws of ICE, along with the Voiding Provisions. In relevant part, the Voiding Provisions applicable to ICE and NYSE Holdings were modified to specify that the European Provisions would automatically become void and be of no further force and effect if at any time ICE or NYSE Holdings, as the case may be, ceased to ''control'' Euronext, with ''control'' defined under International Financial Reporting Standard 10 (as in force at its date of first effectiveness on January 1, 2014), and with cessation of control subject to confirmation from the entity's registered public accountants and to a public disclosure requirement.[6]

In March 2014, in preparation for its announced plan to sell Euronext, ICE contributed its ownership of NYSE Holdings to ICE Holdings, and in connection therewith the Certificate and Bylaws of ICE Holdings were amended to incorporate the modified European Provisions and the modified Voiding Provisions.[7] The Certificate of Incorporation and Bylaws of ICE and of ICE Holdings, and the Limited Liability Company Agreement of NYSE Holdings are referred to collectively as the ''Constituent Documents''.

In June 2014, ICE consummated the sale of substantially all of its interest in Euronext and, accordingly, ceased to control Euronext within the meaning of the Voiding Provisions. As a result, the Voiding Provisions in each of the Constituent Documents were triggered, and the European Provisions in the Constituent Documents automatically became void and are of no further force and effect.[8]

NYSE MKT accordingly proposes to make the following changes to the constituent documents of ICE, ICE Holdings and NYSE Holdings:

Certificate of Incorporation of ICE. The Amended and Restated Certificate of Incorporation of ICE would be further amended and restated as set forth in Exhibit 5A to update the recitals in the initial certification and to eliminate the following provisions, which have become void and without further force and effect by operation of the indicated section because ICE no longer controls Euronext:

- Pursuant to Art. XIII, Section A.2., the following provisions are void and would be deleted: Art. V, Section A.2.(d); Art. V, Section A.3.(a)(ii),

[3] ICE, a public company listed on the New York Stock Exchange (''NYSE''), owns 100% of ICE Holdings, which in turn owns 100% of NYSE Holdings. Through ICE Holdings, NYSE Holdings and NYSE Group, Inc., ICE indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the ''NYSE Exchanges'')—NYSE, NYSE Arca, Inc. (''NYSE Arca'') and NYSE MKT—and (2) 100% of the equity interest of NYSE Market (DE), Inc., NYSE Regulation, Inc., NYSE Arca L.L.C. and NYSE Arca Equities, Inc. ICE also indirectly owns a majority interest in NYSE Amex Options LLC. *See* Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE–2013–42; SR–NYSEMKT–2013–50; SR–NYSEArca–2013–62) (''Release No. 70210'') (approving proposed rule change relating to a corporate transaction in which NYSE Euronext will become a wholly owned subsidiary of Intercontinental Exchange Group, Inc.).

[4] NYSE MKT's affiliates NYSE and NYSE Arca have also submitted the same proposed rule change. *See* SR–NYSE–2015–18 and SR–NYSEArca–2015–33.

[5] *See* Exchange Act Release No. 55293026 [sic] (February 14, 2007), 72 FR 8033 (Feb. 22, 2007) (SR–NYSE–2006–120).

[6] *See* Exchange Act Release No. 70210, 78 FR at 51758.

[7] *See* Exchange Act Release No. 71721 (Mar. 13, 2014), 79 FR 15367 (Mar. 19, 2014) (SR–NYSE–2014–04; SR–NYSEMKT–2014–10; SR–NYSEArca–2014–08).

[8] *See* Exchange Act Release No. 73740 (Dec. 4, 2014), 79 FR 73362 (Dec. 10, 2014) (''Release No. 73740'') (SR–NYSE–2014–53; SR–NYSEMKT–2014–83; SR–NYSEArca–2014–112), for additional information about the events that resulted in the triggering of the Voiding Provisions.

(a)(iii)(z), (b)(ii), (c)(i)(y) and (d)(i)(y); Art. V, Section A.4.(b), A.8, A.9, A.10 and A.11; Art. V, Section B.2.(d); Art. V, Section B.3.(a)(ii), (a)(iii)(z), (b)(ii), (b)(y) and (c)(ii); Art. VII, clause (B); and Art. X, clause (B).

• In addition, the phrases ''or any European Market Subsidiary (as defined below)'' has been deleted from Art. V, Section A.1., and the phrase ''or any European Market Subsidiary'' has been deleted from Art. V, Section B.1., in each case because the phrase refers to a term that is no longer used in the document.

• In Art. V, Section A.3.(a)(i), a reference has been added to ICE Holdings and the erroneous name NYSE Euronext LLC has been corrected to refer to NYSE Holdings LLC. Additionally, references to ICE Holdings and NYSE Holdings have been added to Art. V, Section B.3.(a)(i). These matters were previously addressed in the last sentence of Section 3.15(g) of the Bylaws of ICE.

• Art. XIII itself is deleted because its sole purpose was to define the circumstances under which ICE would no longer control Euronext and to specify the provisions that became void upon such event. NYSE MKT believes it would be confusing to retain Art. XIII because it refers to events that have occurred and to provisions that will have been deleted.

• Art. XIV, establishing an effective time for the document, has been deleted because the effective time is addressed in the initial certification.

Bylaws of ICE. The Fourth Amended and Restated Bylaws of ICE would be further amended and restated as set forth in Exhibit 5B to eliminate the following provisions, which have become void and without further force and effect by operation of the indicated section because ICE no longer controls Euronext:

• Pursuant to Section 10.9(b)(3), the following provisions are void and would be deleted: Sections 3.14(a)(1), 3.14(b)(2), 3.14(b)(4), 3.14(b)(6), 7.2, 8.1(b), 8.2(b), 8.2(c)(2), 8.3(b), 8.3(d), 8.5, 9.2, 9.5, and 10.8; each occurrence of the words ''pursuant to a resolution adopted by at least 75% of the directors then in office'' in Section 3.1; and additionally Sections 3.15(a), 3.15(b), 3.15(c), 3.15(d), 3.15(e), 3.15(f), 11.1(b), 11.2(b) and 11.3(A).

• In Section 3.1, where the reference to 75% of the directors then in office is eliminated, the standard for setting the number of directors is set to a majority of the directors then in office, which was the standard in effect at NYSE Group prior to the Euronext transaction in 2007.

• In Section 3.5, a provision calling for one board meeting to be held in Europe in each year is deleted. This provision was included to accommodate the interests of the Euronext-affiliated directors and, while it was not identified for automatic deletion, ICE views the requirement as imposing an unnecessary expense on ICE and believes the venue of meetings should be in the discretion of management.

• The last sentence of Section 3.15(g) (which will be redesignated Section 3.15) is deleted for the reasons discussed above under ''Certificate of Incorporation of ICE''.

• Section 8.6, applicable to records that relate to both a European Market Subsidiary and a U.S. Regulated Subsidiary, has been deleted because the definition of European Market Subsidiary and all other references to the term have been deleted.

• Section 10.9 is deleted in its entirety for the reasons set forth above relating to Article XIII of the Certificate of Incorporation of ICE, and also because Section 10.9 refers to Stichting NYSE Euronext and its Articles of Formation, which no longer asserts any authority over ICE.[9]

Independence Policy. The Independence Policy would be revised to eliminate from paragraph 3 the references to European securities exchanges and European regulatory authorities that are no longer controlled by, or regulators of entities controlled by, ICE. *See* Exhibit 5C.

Certificate of Incorporation of ICE Holdings. The Sixth Amended and Restated Certificate of Incorporation of ICE Holdings would be further amended and restated as set forth in Exhibit 5D to update the recitals in the initial certification and to eliminate the following provisions, which have become void and without further effect by operation of the indicated section because ICE Holdings no longer controls Euronext:

• Pursuant to Art. XIII, Section A.2., the following provisions are void and would be deleted: Art. V, Section A.2.(d); Art. V, Section A.3.(a)(ii), (a)(iii)(z), (b)(ii), (c)(i)(y) and (d)(i)(y); Art. V, Section A.4.(b), A.8, A.9, A.10 and A.11; Art. V, Section B.2.(d); Art. V, Section B.3.(a)(ii), (a)(iii)(z), (b)(ii), (b)(y) and (c)(ii); Art. VII, clause (B); and Art. X, clause (B).

• In addition, the phrases ''or any European Market Subsidiary (as defined below)'' has been deleted from Art. V, Section A.1., and the phrase ''or any European Market Subsidiary'' has been deleted from Art. V, Section B.1., in each case because the phrase refers to a term that is no longer used in the document.

• Art. XIII itself is deleted for the same reasons as discussed above for ICE.

Bylaws of ICE Holdings. The Third Amended and Restated Bylaws of ICE Holdings would be further amended and restated as set forth in Exhibit 5E to eliminate the following provisions, which have become void and without further force and effect by operation of the indicated section because ICE Holdings no longer controls Euronext:

• Pursuant to Section 10.9(b)(3), the following provisions are void and would be deleted: Sections 3.14(a)(1), 3.14(b)(2), 3.14(b)(4), 3.14(b)(6), 7.2, 8.1(b), 8.2(b), 8.2(c)(2), 8.3(b), 8.3(d), 8.5, 9.2, 9.5, and 10.8; each occurrence of the words ''pursuant to a resolution adopted by at a majority of the directors then in office'' in Section 3.1; and additionally Sections 3.15(a), 3.15(b), 3.15(c), 3.15(d), 3.15(e), 3.15(f), 11.1(b), 11.2(b) and 11.3(A).

• In Section 3.5, a provision calling for one board meeting to be held in Europe in each year is deleted, for the reasons discussed above under ''Bylaws of ICE.''

• Section 8.6 is deleted for the reasons discussed above under ''Bylaws of ICE''.

• Section 10.9 is deleted in its entirety for the reasons set forth above under ''Bylaws of ICE''.

Limited Liability Company Agreement of NYSE Holdings. The Sixth Amended and Restated Limited Liability Company Agreement of NYSE Holdings would be further amended and restated as set forth in Exhibit 5F to update the recitals and to eliminate the following provisions, which have become void and without further force and effect by operation of the indicated section because NYSE Holdings no longer controls Euronext:

• Pursuant to Section 16.3(b)(3), the following provisions are void and would be deleted: Sections 3.12(b)(1), 3.12(c)(2), 3.12(c)(4), 3.12(c)(6),[10] 12.1(b), 12.2(b), 12.2(c)(ii), 12.3(b), 12.3(d), 12.4(b), 13.2, 14.2, 14.5, and 16.2; and, additionally, Sections 4.1(b), 9.1(a)(2)(d), 9.1(a)(3)(A)(ii), 9.1(a)(3)(A)(iii)(z), 9.1(a)(3)(B)(ii), 9.1(a)(3)(C)(i)(y), 9.1(a)(3)(D)(i)(y),[11]

[9] *See* Release No. 73740, 79 FR at 73362 and note 9, *supra.*

[10] The four subsections of Section 3.12 are mistakenly identified in Section 16.3(a) as subsections of Section 3.11.

[11] Sections 9.1(a)(3)(B)(ii), 9.1(a)(3)(C)(i)(y) and 9.1(a)(3)(D)(i)(y) are mistakenly identified in Section 16.3 as subsections of Section 9.1(c)(3) rather than Section 9.1(a)(3).

9.1(a)(4)(b),[12] 9.1(b)(2)(d), 9.1(b)(3)(A)(ii), 9.1(b)(3)(A)(iii)(z), 9.1(b)(3)(B)(ii), 9.1(b)(3)(B)(y), 9.1(b)(3)(C)(ii), 16.1(a)(A) and 16.1(b), and the definitions of ''Euronext College of Regulators'', ''European Exchange Regulations'', ''European Regulated Market'', ''European Regulator'', ''European Market Subsidiary'' and ''Europe'' set forth in Section 1.1.

• Additional definitions that define terms no longer used in the document also are deleted from Section 1.1: ''Euronext'', ''Euronext Call Option'', ''Euronext Transaction Time'', ''European Disqualified Person'', ''European Subsidiaries' Confidential Information'', ''Execution Date'', ''Extraordinary Transaction'', ''Foundation'', ''Governmental Entity'' (and the reference to such term in the definition of ''Law''), ''Merger'' and ''Priority Shares''.

• Certain cross-references have been corrected in the definitions of ''ETP Holder'', ''MKT Member'', ''NYSE Arca'', ''NYSE Arca Equities'', ''NYSE Market'', ''NYSE Member'', ''NYSE MKT'', ''OTP Firm'', ''OTP Holder'' and ''U.S. Disqualified Person''.

• In Section 3.7, a provision calling for one board meeting to be held in Europe in each year is deleted for the reasons discussed above under ''Bylaws of ICE''.

• References to European filing requirements have been eliminated from Section 7.2.

• Section 12.4(c), applicable to records that relate to both a European Market Subsidiary and a U.S. Regulated Subsidiary, has been deleted for the reasons discussed above under ''Bylaws of ICE,'' Section 8.6.

• Section 16.3 itself is deleted for the reasons discussed under ''Certificate of Incorporation of ICE'' with reference to Art. XIII.

• The phrase ''or any European Market Subsidiary'' has been eliminated from Sections 9.1(a)(1) and 9.1(b)(1), in each case because the phrase refers to a term that is no longer used in the document.

In each case, where a provision being eliminated falls within a numbered or lettered list, the subsequent numbers or letters, as the case may be, and related cross-references have been adjusted for continuity. In some cases where a list contains only a small number of items after eliminations, the number or lettering has been removed entirely.

Other non-substantive conforming changes have been made as appropriate for clarity and consistency.

[12] Section 9.1(a)(4)(b) is mistakenly identified in Section 16.3 as a subsection of Section 9.1(c)(4) rather than Section 9.1(a)(4).

2. Statutory Basis

NYSE MKT believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act [13] in general, and with Section 6(b)(1) [14] in particular, in that it enables NYSE MKT to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of NYSE MKT. The European Provisions were implemented at a time when NYSE MKT was owned by a company with substantial holdings of non-U.S. securities exchanges, substantial non-U.S. board representation, and explicit obligations on the part of its board to give due consideration to matters of non-U.S. law and the interests of non-U.S. stakeholders. In light of the elimination of these concerns and the concomitant voiding of the European Provisions, NYSE MKT believes that the proposed rule change is consistent with Section 6(b)(1).

NYSE MKT also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act [15] because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. NYSE MKT believes that elimination of the European Provisions (which by their terms are now void and of no further force and effect) will remove impediments to the operation of NYSE MKT by eliminating the potential for uncertainty among analysts and investors as to the practical implications of the European Provisions on NYSE MKT as a marketplace and as a significant asset of ICE if they remain in the Constituent Documents notwithstanding their vitiation by the Voiding Provisions. For the same reasons, the proposed rule change is also designed to protect investors as well as the public interest.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(1).

[15] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE MKT 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 Exchange Act. The proposed rule change would shorten and simplify the Constituent Documents and the ICE Directors Independence Policy without making any substantive changes, thereby enhancing their transparency. The proposed rule change would result in no concentration or other changes of ownership of exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17] Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b&4(f)(6) thereunder.[18]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [19] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission 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. The Exchange has satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

become operative immediately upon filing. The Exchange notes that such waiver would accommodate the timing of the effectiveness under the Delaware General Corporation Law of the Second Amended and Restated Certificate of Incorporation of ICE, which the Exchange represents will be filed in Delaware upon approval by the stockholders of ICE at the annual meeting of stockholders scheduled for May 2015. The Exchange believes that waiving the 30-day operative delay would permit the modifications to occur at an earlier time and thereby reduce the potential for confusion among persons reading the Constituent Documents. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change 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–NYSEMKT–2015–32 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–2015–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2015–32, and should be submitted on or before June 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11872 Filed 5–15–15; 8:45 am]

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[21] For purposes only of waiving the 30-day operative delay, the Commission has 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. 34–74937; File No. SR–CBOE–2015–046]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to The Customized Option Pricing Service

May 12, 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 1, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') proposes to amend the terms of the Customized Option Pricing Service (''COPS''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the terms of the Exhange's COPS,[3] specifically, the COPS data revenue-sharing plan. The Exchange is not proposing to change the fees for COPS data.

[3] *See* Securities Exchange Act Release No. 67813 (September 10, 2012), 77 FR 56903 (September 14, 2012) (SR–CBOE–2012–083), Securities Exchange Act Release No. 67928 (September 26, 2012), 77 FR 60161 (October 2, 2012) (SR–CBOE–2012–090), Securities Exchange Act Release No. 70705 (October 17, 2013), 78 FR 63265 (October 23, 2013) (SR–CBOE–2013–097), Securities Exchange Act Release No. 70845 (November 12, 2013), 78 FR 69168 (November 18, 2013) (SR–CBOE–2013–104), Securities Exchange Act Release No. 72621 (July 16, 2014), 79 FR 42616 (July 22, 2014) (SR–CBOE–2014–057) and Securities Exchange Act Release No. 74159 (January 28, 2015), 80 FR 5863 (February 23, 2015) (SR–CBOE–2015–007).

Background

COPS provides market participants with an ''end-of-day'' [4] file and ''historical'' [5] files of valuations for Flexible Exchange (''FLEX'') [6] options and certain over-the-counter (''OTC'') options (collectively, ''COPS Data''). Market Data Express, LLC (''MDX''), an affiliate of CBOE, offers COPS Data for sale to all market participants. COPS Data is available to ''Subscribers'' for internal use and internal distribution only, and to ''Customers'' who, pursuant to a written vendor agreement between MDX and a Customer, may distribute the Data externally (*i.e.,* act as a vendor) and/or use and distribute the Data internally.

COPS Data consists of indicative [7] values for four categories of ''customized'' options. The first category of options is all open series of FLEX options listed on any exchange that offers FLEX options for trading.[8] The second category is OTC options that have the same degree of customization as FLEX options. The third category includes options with strike prices expressed in percentage terms. Values for such options are expressed in percentage terms and are theoretical values.[9] The fourth category includes ''exotic'' options.[10]

The Exchange uses values produced by CBOE Trading Permit Holders (''TPHs'') to produce COPS Data. Participating CBOE TPHs submit values to MDX on options series specified by MDX on a daily basis. These values are generated by the TPH's internal pricing models. The valuations that MDX ultimately publishes are an average of multiple contributions of values from participating CBOE TPHs. For each value provided by MDX through COPS, MDX includes a corresponding indication of the number of TPH contributors that factored into that value.

CBOE TPHs that meet the following objective qualification criteria are allowed to contribute values to MDX for purposes of producing COPS Data. Interested CBOE TPHs must be approved by the Exchange, have the ability to provide valuations to MDX in a timely manner each day after the close of trading, and sign a services agreement with CBOE. Interested CBOE TPHs must also have the ability to provide both indicative and implied volatility valuations on several different types of options, including (i) options on all open FLEX series traded on any exchange that offers FLEX options for trading, (ii) options on any potential new FLEX options series, (iii) OTC options that have the same degree of customization as FLEX options, (iv) customized options where the strike price is expressed in percentage terms (the valuations provided to MDX must also be expressed in percentage terms), and (v) exotic options. In addition, interested CBOE TPHs must participate in a testing phase with MDX. The values submitted by a TPH during the testing phase and in live production must meet MDX's quality control standards designed to ensure the integrity and accuracy of COPS Data. MDX has implemented procedures including monthly performance reviews to help ensure the integrity and accuracy of COPS Data.

To help ensure that MDX receives numerous values from multiple TPHs on a consistent basis, MDX shares revenue from the sale of COPS Data with participating CBOE TPHs.[11] The amount of revenue that MDX shares with participating TPHs is a percentage of the total revenue received by MDX from the sale of COPS Data. The revenue sharing is based on the following table:

No. of participating TPHs	Total revenue share (percent)	Revenue share per TPH
3	21	7%.
4	24	6%.
5 or more	30	30% divided by the number of participating TPHs.

If only three TPHs participate, MDX shares 21% of total revenue with each TPH receiving a 7% share. If four TPHs participate, MDX shares 24% of total revenue with each TPH receiving a 6% share. If five or more TPHs participate, MDX shares 30% of total revenue divided equally among the TPHs. There are currently five participating TPHs.

In July 2014, the Exchange submitted a proposed rule change to, among other things, temporarily change the COPS contributor compensation structure from a revenue sharing plan to a fixed payment structure for a six month period (''Fixed Payment Period'').[12] MDX has now transitioned back to the revenue sharing plan described herein. If COPS revenue exceeds $2,000,000 in a calendar year, the percentage of total COPS revenue shared with TPH contributors will increase from 30% to 32% if a new contributor is added to COPS.[13] In subsequent years, if the previous calendar year's COPS revenue increases by $1,000,000 or more, the percentage of total COPS revenue shared with contributors will increase by 2% if an additional contributor is added to COPS. The total number of COPS contributors is limited to fifteen.

Proposal

The Exchange proposes to change the COPS contributor compensation structure for the remainder of 2015.[14] All revenue from the sale of COPS Data would be paid to COPS contributors for the remainder of 2015 (including accrued revenue during the now expired Fixed Payment Period). The revenue would be divided equally among COPS contributors. The Exchange had hoped that at the conclusion of the Fixed Payment Period, COPS revenue would be at a level such that the COPS contributors would receive a revenue share roughly in line with the fixed payments they received during the Fixed Payment Period. This has not yet

[4] ''End of day'' refers to data that is distributed prior to the opening of the next trading day.

[5] ''Historical'' COPS data consists of COPS data that is over one month old (*i.e.,* copies of the ''end-of-day'' COPS file that are over one month old).

[6] FLEX options are exchange traded options that provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[7] ''Indicative'' values are indications of potential market prices only and as such are neither firm nor the basis for a transaction.

[8] Current FLEX options open interest spans over 2,000 series on over 300 different underlying securities.

[9] These values are theoretical in that they are indications of potential market prices for options that have not traded (*i.e.* do not yet exist). Market participants sometimes express option values in percentage terms rather than in dollar terms because they find it is easier to assess the change, or lack of change, in the marketplace from one day to the next when values are expressed in percentage terms.

[10] Exotic options are options which are generally traded OTC and are more complex than standard options, usually relating to determination of payoff. An exotic option may also include a non-standard underlying instrument, developed for a particular client or for a particular market.

[11] The fees that MDX charges for COPS Data are set forth on the Price List on the MDX Web site (*www.marketdataexpress.com*). MDX currently charges a fee per option per day for ''end-of-day'' COPS data. The amount of the fee is reduced based on the number of options valuations purchased.

[12] *See* Securities Exchange Act Release No. 72621 (July 16, 2014), 79 FR 42616 (July 22, 2014) (SR–CBOE–2014–057) (''COPS Enhancements Rule Filing'').

[13] The addition of new contributors is accomplished through a try out mechanism. *See* COPS Enhancements Rule Filing.

[14] The Exchange is not proposing to eliminate the revenue share plan, only to suspend it temporarily as described herein.

occurred. The proposed payments are intended to, at a minimum, help COPS contributors cover their costs of producing valuations for COPS while the Exchange continues to grow the COPS business. MDX would transition back to the revenue share plan described above on January 1, 2016.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change is not designed to permit unfair discrimination between CBOE TPHs because all COPS data revenue would be divided equally among TPH contributors for the remainder of 2015. The Exchange believes the proposed rule change is consistent with the protection of investors and the public interest in that it would provide incentive for all of the COPS contributors to continue to participate in COPS while the Exchange continues to grow the COPS business, thereby helping to maintain the quality of COPS Data.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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. To the contrary, the Exchange believes the proposal is procompetitive in that it will incentivize COPS TPH contributors to continue producing quality valuations to help keep COPS competitive with other similar market data products.[18]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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,[19] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6)[22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that the proposal is consistent with the protection of investors and the public interest because it help COPS contributors cover their costs of producing valuations for COPS while the Exchange continues to grow the COPS business, and thereby assist the Exchange with maintaining its current roster of TPH contributors. The Commission agrees and has determined to waive the 30-day operative date so that the proposal may take effect upon filing.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2015–046 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–CBOE–2015–046. 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.,

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *Id.*

[18] Market data vendors including SuperDerivatives, Markit, Prism, and Bloomberg's BVAL service produce option value data that is similar to COPS Data. The Options Clearing Corporation (''OCC'') also produces FLEX option value data that is similar to the FLEX option value data that is included in COPS.

[19] The Exchange has fulfilled this requirement.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–046 and should be submitted on or before June 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11877 Filed 5–15–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74938; File No. SR–BATS–2015–35]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

May 12, 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 1, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule in order to: (1) Amend the rebate associated with fee code BY; (2) eliminate the NBBO Setter and Joiner Tiers; (3) establish a Single MPID Investor Tier; and (4) simplify pricing related to Physical Connection Fees.

Fee Code BY

The Exchange currently provides a rebate of $0.0016 per share for Members' orders that yield fee code BY, which routes to BYX and removes liquidity using Destination Specific, TRIM, TRIM2, TRIM3, or SLIM routing strategies. The Exchange proposes to amend its Fee Schedule to decrease the rebate for orders that yield fee code BY to $0.0015 per share. The proposed change represents a pass through of the rate BATS Trading, Inc. (''BATS Trading''), the Exchange's affiliated routing broker-dealer, is provided for routing orders to BYX that remove liquidity. The proposed change is in response to BYX's May 2015 fee change where BYX decreased its rebate from $0.0016 per share to $0.0015 per share.[6] When BATS Trading routes to and removes liquidity from BYX, it will now receive a standard rebate of $0.0015 per share. BATS Trading will pass through the rebate provided by BYX to the Exchange and the Exchange, in turn, will pass through this rate to its Members.

NBBO Setter and Joiner Tiers

The Exchange currently offers an additional rebate per share for certain orders that establish a new NBBO or that join the NBBO when the Exchange is not already at the NBBO. Such additional rebates range from $0.0001 per share to $0.0005 per share. The Exchange is proposing to eliminate these additional rebates because the rebates have not achieved the desired effect, despite being designed to incentivize Members to add liquidity that sets or joins the Exchange to the NBBO. As such, the Exchange is proposing to eliminate the text in footnote four related to the NBBO Setter and Joiner Tiers.

Single MPID Investor Tier

The Exchange proposes to add new text to footnote four to establish a new Investor Tier under which a Member can qualify for a rebate of $0.0031 per share on an MPID by MPID basis if they meet the following criteria: (i) The MPID's ADAV[7] as a percentage of TCV[8] is equal to or greater than 0.35%; and (ii) the MPID's ADAV as a percentage of ADV[9] is equal to or greater than 90%. The Exchange notes that this proposal is substantively identical to the ''Investor Tier'' rebate offered on EDGX Exchange, Inc. (''EDGX'').[10]

Physical Connection Fees

The Exchange currently maintains a presence in two third-party data centers: (i) The primary data center where the Exchange's business is primarily conducted on a daily basis, and (ii) a

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] *See* BYX Exchange Fee Schedule Changes Effective May 1, 2015 *available at http://cdn.batstrading.com/resources/fee_schedule/2015/BATS-BYX-Exchange-BZX-Exchange-EDGA-Exchange-and-EDGX-Exchange-Fee-Schedule-Changes-Effective-May-1-2015.pdf.*

[7] ''ADAV'' means average daily volume calculated as the number of shares added per day.

[8] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

[9] ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day.

[10] *See* EDGX Exchange, Inc. Fee Schedule *available at http://www.batstrading.com/support/fee_schedule/edgx/.*

secondary data center, which is predominantly maintained for business continuity purposes. The Exchange currently assesses fees to Members and non-Members of $1,000 for any 1G physical port connection at either data center and of $2,500 for any 10G physical port connection at either data center. The Exchange also provides market participants with the ability to access the Exchange's network through another data center entry point, or Point of Presence (''PoP''), at a data center other than the Exchange's primary or secondary data center.[11] The Exchange currently charges $2,000 for any 1G physical port to connect to the Exchange in any data center where the Exchange maintains a PoP other than the Exchange's primary or secondary data center and $5,000 per month for each single physical 10G port provided by the Exchange to any Member or non-member in any data center where the Exchange maintains a PoP other than the Exchange's primary or secondary data center.

The Exchange proposes to simplify its pricing structure by imposing a uniform rate for physical ports regardless of the data center in which the port connection is made. Specifically, the Exchange proposes to charge $1,000 per month for all 1G physical port connections and $2,500 per month for all 10G physical ports in any location where the Exchange offers the ability to connect to Exchange systems, including the secondary data center and any PoP location. In conjunction with the proposed change, the Exchange also proposes minor changes to re-format the chart that sets forth physical connection fees and also proposes to re-locate such chart and the accompanying text such that physical connection fees directly follow logical port fees.

Implementation Date

The Exchange proposes to implement the amendments to its fee schedule effective immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members.

Fee Code BY

The Exchange believes that its proposal to decrease the rebate for orders that yield fee code BY represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. Prior to the BYX's May 2015 fee change, BYX provided BATS Trading a rebate of $0.0016 per share to remove liquidity, which BATS Trading passed through to the Exchange and the Exchange provided its Members. When BATS Trading routes to BYX, it will now be provided a rebate of $0.0015 per share. The Exchange does not levy additional fees or offer additional rebates for orders that it routes to BYX through BATS Trading. Therefore, the Exchange believes that the proposed change to fee code BY is equitable and reasonable because it accounts for the pricing changes on BYX, which enables the Exchange to provide its Members the applicable pass-through rebate. Lastly, the Exchange notes that routing through BATS Trading is voluntary and believes that the proposed change is non-discriminatory because it would apply uniformly to all Members.

NBBO Setter and Joiner Tiers

The Exchange believes that the proposed elimination of the NBBO Setter and Joiner Tiers represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because, as described above, the additional rebates offered under these tiers are not affecting Members' behavior in the manner originally conceived by the Exchange. While the Exchange acknowledges the benefit of Members entering orders that set or join the NBBO, the Exchange has generally determined that it is providing additional rebates for liquidity that would be added on the Exchange regardless of whether the tiers existed. By paying these rebates, the Exchange is not only offering rebates for orders that would set or join the NBBO without being incentivized to do so, but also missing out on the opportunity to offer other rebates or reduced fees that could incentivize other behavior that would enhance market quality on the Exchange, which would benefit all Members. As such, the Exchange also believes that the proposed elimination of the NBBO Setter and Joiner Tiers would be non-discriminatory in that it currently applies equally to all Members and, upon elimination, would no longer be available to any Members. Further, it will allow the Exchange to explore other ways in which it may enhance market quality for all Members.

Single MPID Investor Tier

The Exchange believes that the proposed addition of the Single MPID Investor Tier represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because it rewards Members with order flow characteristics that contribute meaningfully to price discovery on the Exchange. In other words, Members that post a substantial amount of liquidity and primarily post liquidity are valuable Members to the Exchange and the marketplace in terms of liquidity provision. By applying the tier on a single MPID rather than across a Member's entire trading activity, the Exchange is also allowing more Members to potentially receive the enhanced rebates for their trading activity related to liquidity provision. The Single MPID Investor Tier also encourages Members to primarily add liquidity in order to satisfy the ADAV as a percentage of ADV of at least 90%. Such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of higher rebates. The increased liquidity also benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the ones proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes.

In addition, the rebate is also reasonable in that other exchanges

[11] *See* Securities Exchange Act Release No. 70199 (August 14, 2013), 78 FR 51250 (August 20, 2013) (SR–BATS–2013–036) (Order Approving a Proposed Rule Change to Introduce a Connectivity Option Through Points of Presence).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

likewise employ similar pricing mechanisms. For example, EDGX offers a substantively identical investor tier that provides enhanced rebates for its members that meet certain thresholds that are based on the same metrics proposed by the Exchange, which are designed to encourage price discovery and market transparency. As stated above, EDGX's investor tier is substantively identical to the Single MPID Investor Tier proposed by the Exchange except that on EDGX a member will receive a $0.0032 per share rebate for orders that add liquidity where the member has an ADAV of at least 0.15% of TCV and an ADAV as a percentage of ADV of at least 85%. Finally, the Exchange also believes that the proposed Single MPID Investor Tier is non-discriminatory in that it would apply equally to all Members.

Physical Connection Fees

The Exchange believes that providing uniform rates for all 1G and 10G physical connections to Exchange is reasonable because such change represents a reduction in fees for any Member that connects to the Exchange at a PoP location and no change to fees for any Member located in the Exchange's primary or secondary data center. The Exchange also believes that the proposal is equitably allocated and not unreasonably discriminatory because, as proposed, market participants will be able to access the Exchange at uniform rates regardless of whether such access is at the Exchange's primary or secondary data center location or another location where the Exchange offers access.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed amendments to its fee schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Fee Code BY

The Exchange believes that its proposal to pass through the amended rebate for orders that yield fee code BY would increase intermarket competition because it offers customers an alternative means to route to BYX for the same rebate that they would be provided if they entered orders on that trading center directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rebate would apply uniformly to all Members.

NBBO Setter and Joiner Tiers

The Exchange does not believe that its proposal to eliminate the NBBO Setter and Joiner Tiers would burden competition, but, rather, enhance the Exchange's ability to compete with other market centers. As described above, the Exchange believes that it is offering enhanced rebates for orders that would be submitted to the Exchange without the enhanced rebate, which prevents the Exchange from being able to offer other rebates or reduced fees that might be able to enhance market quality to the benefit of all Members. As such, eliminating the NBBO Setter and Joiner Tiers will allow the Exchange other opportunities to enhance market quality on the Exchange and ultimately, better compete with other market centers.

Single MPID Investor Tier

The Exchange believes that its proposal to adopt the Single MPID Investor Tier would increase intramarket competition by rewarding Members with order flow characteristics that contribute meaningfully to price discovery on the Exchange. In other words, the proposal is a competitive proposal in that it is designed to incentivize the entry of orders to the Exchange that will provide liquidity to other Members. The Exchange does not believe that its proposal would burden intramarket competition because the proposed rebate would apply uniformly to all Members that achieve the objective criteria of the Single MPID Investor Tier.

Physical Connection Fees

The Exchange does not believe that the proposed change to physical port fees represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Rather, as described above, the Exchange is simply normalizing its fees for physical access to the Exchange regardless of the location where a physical connection is made. The offering is consistent with the Exchange's own economic incentives to facilitate as many market participants as possible in connecting to its market. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange does not believe that its proposal would burden intramarket competition because the fees for physical connections would apply uniformly to all Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and paragraph (f) of Rule 19b–4 thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2015–35 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–BATS–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

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2015–35, and should be submitted on or before June 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11878 Filed 5–15–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, May 20, 2015 at 10:00 a.m., in the Auditorium, Room L–002.

The subject matters of the Open Meeting will be:

• The Commission will consider whether to propose new rules and forms and amendments to current rules and forms to modernize the reporting and disclosure of information by registered investment companies.

• The Commission will consider whether to propose form and rule amendments to require investment advisers to provide additional information concerning their operations, require the maintenance of performance records, and remove outdated transition provisions from rules.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: May 13, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–12067 Filed 5–14–15; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74934; File No. SR–BX–2015–015]

Self-Regulatory Organizations; NASDAQ OMX BX Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend and Restate Certain Rules That Govern the NASDAQ OMX BX Equities Market

May 12, 2015.

On March 20, 2015, NASDAQ OMX BX, Inc. (''BX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend and restate certain BX rules that govern the BX Equities Market in order to provide a clearer and more detailed description of certain aspects of its functionality. The proposed rule change was published for comment in the **Federal Register** on April 6, 2015.[3] The Commission received no comment letters regarding the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is May 21, 2015.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act[5] and for the reasons stated above, the Commission designates July 5, 2015, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11875 Filed 5–15–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74926; File No. SR–DTC–2015–005]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Technical Revisions to the DTC Custody Service Guide and the DTC Deposits Service Guide

May 12, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4[2] thereunder, notice is hereby given that on April 30, 2015, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(4)[4] thereunder. The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of technical revisions to the: (i) DTC Custody Service Guide (''Custody Guide'') and (ii) DTC Deposits Service

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74617 (March 31, 2015), 80 FR 18473.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

[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)(4).

Guide (''Deposits Guide'') in order to make technical changes and updates.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would revise both of [sic] the Custody Guide and the Deposits Guide to make technical changes and updates to reflect current terminology, systems functionality, procedures and practices, as well as to simplify and clarify text.

In this regard, the Custody Guide would be revised to:

(i) Harmonize descriptions throughout regarding the eligibility of securities and other assets for deposit in the Custody Service, and update the list of items that are accepted or not accepted for deposit;

(ii) Update references to functionality with respect to Participant interfaces with DTC;

(iii) Clarify that Participants' may utilize the New York Window Service to facilitate physical transfers with respect to deliveries of securities for services offered by National Securities Clearing Corporation (NSCC) such as the Envelope Settlement Service (ESS) and the Automated Customer Account Transfer Service (ACATS);

(iv) Remove the ''Terms and Conditions'' section provided for the New York Window Service which is not necessary in light of the indemnification provisions relating to DTC's offering of services under DTC Rule 6;[6]

(v) Update text, including descriptions of processes and address information for the Custody Service and cross-references throughout; and

(vi) Conform grammar and usage of terminology throughout.

In addition, the Deposits Guide would be revised to:

(i) Remove language relating to the Custody Service that is duplicative of the provisions in the Custody Guide;

(ii) Clarify that provisions relating DTC's use of Participants' medallion guarantee stamps for purposes of the Branch Deposit Service also apply with respect to the Restricted Deposit Service;

(iii) Update other text, including descriptions of processes and address information for the Deposits Service and cross-references throughout; and

(iv) Conform grammar and usage of terminology throughout.

Implementation Date

The proposed rule change would become effective immediately.

2. Statutory Basis

The proposed rule change would revise the Custody Guide and the Deposits Guide to make technical changes and updates to reflect current terminology, systems functionality, procedures and practices, as well as simplify and clarify the texts of both guides. Therefore, DTC believes the proposed rule change is consistent with the requirements of: (i) The Act, in particular Section 17A(b)(3)(F) of the Act,[7] which requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions, and (ii) Rule 17Ad–22(d)(9)[8] promulgated under the Act which requires, *inter alia,* that a clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and evaluate the risks and costs associated with using its services, because the proposed changes simplify and clarify the Guides' respective texts for the users of DTC's services.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact, or impose any burden, on competition.

(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 yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[9] of the Act and paragraph (f) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2015–005 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–2015–005. 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

[5] Each term not otherwise defined herein has the respective meaning set forth in DTC's rules (the ''Rules''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf.*

[6] *See* DTC Rules (Rule 6 (Services)), pp. 45–49, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf.*

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17Ad–22(d)(9).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2015–005 and should be submitted on or before June 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11868 Filed 5–15–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74927; File No. SR–FINRA–2015–010]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Tier Size Pilot of FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities)

May 12, 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 30, 2015, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) to extend the Tier Size Pilot, which currently is scheduled to expire on May 15, 2015, for an additional three months, until August 14, 2015.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA proposes to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) (the ''Rule'') to extend, until August 14, 2015, the amendments set forth in File No. SR–FINRA–2011–058 (''Tier Size Pilot'' or ''Pilot''), which currently are scheduled to expire on May 15, 2015.[4]

The Tier Size Pilot was filed with the SEC on October 6, 2011,[5] to amend the minimum quotation sizes (or ''tier sizes'') for OTC Equity Securities.[6] The goals of the Pilot were to simplify the tier structure, facilitate the display of customer limit orders, and expand the scope of the Rule to apply to additional quoting participants. During the course of the pilot, FINRA collected and provided to the SEC specified data with which to assess the impact of the Pilot tiers on market quality and limit order display.[7] On September 13, 2013, FINRA provided to the Commission an assessment on the operation of the Tier Size Pilot utilizing data covering the period from November 12, 2012 through June 30, 2013.[8] As noted in the 2013 Assessment, FINRA believed that the analysis of the data generally showed that the Tier Size Pilot had a neutral to positive impact on OTC market quality for the majority of OTC Equity Securities and tiers; and that there was an overall increase of 13% in the number of customer limit orders that met the minimum quotation sizes to be eligible for display under the Pilot tiers. In the 2013 Assessment, FINRA recommended adopting the tiers as permanent, but extended the pilot period to allow more time to gather and analyze data after the November 12, 2012 through June 30, 2013 assessment period.[9] On January 29, 2015, FINRA further extended the Pilot period to permit FINRA and the Commission to consider the implications of the data collected since June 30, 2013.[10] FINRA has reviewed this post-June 30, 2013 data, and believes that the impact described in the 2013 Assessment has continued to hold (and has improved in certain areas).

The purpose of this filing is to extend the operation of the Tier Size Pilot for an additional three month period, until August 14, 2015, to provide FINRA with additional time to finalize its recommendation with regard to the Tier Size Pilot.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be May 15, 2015.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 73299 (October 3, 2014), 79 FR 61120 (October 9, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2014–041); *see also* Securities Exchange Act Release No. 67208 (June 15, 2012), 77 FR 37458 (June 21, 2012) (Order Approving File No. SR–FINRA–2011–058, as amended).

[5] *See* Securities Exchange Act Release No. 65568 (October 14, 2011), 76 FR 65307 (October 20, 2011) (Notice of Filing of File No. SR–FINRA–2011–058).

[6] ''OTC Equity Security'' means any equity security that is not an ''NMS stock'' as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term OTC Equity Security shall not include any Restricted Equity Security. *See* FINRA Rule 6420.

[7] FINRA ceased collecting Pilot data for submission to the Commission on February 13, 2015.

[8] The assessment is part of the SEC's comment file for SR–FINRA–2011–058 and also is available on FINRA's Web site at: *http://www.finra.org/Industry/Regulation/RuleFilings/2011/P124615* (''Pilot Assessment'').

[9] *See* Securities Exchange Act Release No. 70839 (November 8, 2013), 78 FR 68893 (November 15, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2013–049).

[10] *See* Securities Exchange Act Release No. 74251 (February 11, 2015), 80 FR 8741 (February 18, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2015–002).

[11] 15 U.S.C. 78*o*–3(b)(6).

requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act.[12] Section 15A(b)(11) requires that FINRA rules include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied.

FINRA believes that the extension of the Tier Size Pilot for an additional three months is consistent with the Act in that it would provide the Commission and FINRA with additional time to determine whether the pilot tiers should be made permanent.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

FINRA 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 waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue without interruption. Therefore, the Commission designates the proposal as operative upon filing.[17]

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–FINRA–2015–010 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–FINRA–2015–010. 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 St. 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 FINRA. 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–FINRA–2015–010, and should be submitted on or before June 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11869 Filed 5–15–15; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78*o*–3(b)(11).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74939; File No. SR–BYX–2015–24]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

May 12, 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 1, 2015, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule in order to: (1) Amend the rebate associated with removing liquidity from the Exchange; (2) eliminate the NBBO Setter Tier; and (3) simplify pricing related to Physical Connection Fees.

Standard Remove Rebate

The Exchange currently provides a rebate of $0.0016 per share for Members' orders that remove liquidity from the Exchange, which includes those orders that yield fee codes BB, N, and W. The Exchange proposes to amend its Fee Schedule to decrease the rebate for orders that remove liquidity to $0.0015 per share.

NBBO Setter Tier

The Exchange currently offers an additional incentive per share for orders from Members that have an ADAV [6] equal to or greater than 0.30% of the TCV [7] and that add liquidity on the Exchange and establish a new NBBO. Specifically, the Exchange provides an additional rebate of $0.0001 per share for such orders. The Exchange is proposing to eliminate this additional incentive because it has not achieved the desired effect, despite being designed to incentivize Members to add liquidity that sets the NBBO. As such, the Exchange is proposing to delete the NBBO Setter Tier in footnote 3 and replace it with ''(Reserved.)'' The Exchange is also proposing to delete each reference to footnote 3 in the Fee Codes and Associated Fees section of the fee schedule.

Physical Connection Fees

The Exchange currently maintains a presence in two third-party data centers: (i) The primary data center where the Exchange's business is primarily conducted on a daily basis, and (ii) a secondary data center, which is predominantly maintained for business continuity purposes. The Exchange currently assesses fees to Members and non-Members of $1,000 for any 1G physical port connection at either data center and of $2,500 for any 10G physical port connection at either data center. The Exchange also provides market participants with the ability to access the Exchange's network through another data center entry point, or Point of Presence (''PoP''), at a data center other than the Exchange's primary or secondary data center.[8] The Exchange currently charges $2,000 for any 1G physical port to connect to the Exchange in any data center where the Exchange maintains a PoP other than the Exchange's primary or secondary data center and $5,000 per month for each single physical 10G port provided by the Exchange to any Member or non-member in any data center where the Exchange maintains a PoP other than the Exchange's primary or secondary data center.

The Exchange proposes to simplify its pricing structure by imposing a uniform rate for physical ports regardless of the data center in which the port connection is made. Specifically, the Exchange proposes to charge $1,000 per month for all 1G physical port connections and $2,500 per month for all 10G physical ports in any location where the Exchange offers the ability to connect to Exchange systems, including the secondary data center and any PoP location. In conjunction with the proposed change, the Exchange also proposes minor changes to re-format the chart that sets forth physical connection fees and also proposes to re-locate such chart and the accompanying text such that physical connection fees directly follow logical port fees.

Implementation Date

The Exchange proposes to implement the amendments to its fee schedule effective immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members.

Standard Remove Rebate

The Exchange believes that its proposal to decrease the standard rebate for orders that remove liquidity and yield fee codes BB, N, or W represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because it will reduce costs for the Exchange, thereby allowing the Exchange to apply those costs elsewhere to the benefit of all Members. While adjusting the Exchange's rebate of $0.0016 per share to remove liquidity to $0.0015 per share will obviously result in a reduction in rebates paid per share to Members, the Exchange believes that

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] ''ADAV'' means average daily volume calculated as the number of shares added per day.

[7] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

[8] *See* Securities Exchange Act Release No. 74050 (January 14, 2015), 80 FR 2989 (January 21, 2015) (SR–BYX–2015–01) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for use of BATS Y-Exchange, Inc.).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

any potential negative impact of this change will be outweighed by the Exchange's ability to apply the cost savings to other areas of the business, including enhanced rebates, reduced fees, and improved technology on the Exchange. The Exchange also believes that the proposed fee change is non-discriminatory because it would apply uniformly to all Members.

NBBO Setter Tier

The Exchange believes that the proposed elimination of the NBBO Setter Tier represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because, as described above, the reduced fees offered by this tier is not affecting Members' behavior in the manner originally conceived by the Exchange. While the Exchange acknowledges the benefit of Members entering orders that set the NBBO, the Exchange has generally determined that it is providing additional rebates for liquidity that would be added on the Exchange regardless of whether the tier existed. By reducing these fees, the Exchange is not only reducing the fees it receives for orders that would set the NBBO without being incentivized to do so, but also missing out on the opportunity to offer other rebates or reduced fees that could incentivize other behavior that would enhance market quality on the Exchange, which would benefit all Members. As such, the Exchange also believes that the proposed elimination of the NBBO Setter Tier would be non-discriminatory in that it currently applies equally to all Members and, upon elimination, would no longer be available to any Members. Further, it will allow the Exchange to explore other ways in which it may enhance market quality for all Members.

Physical Connection Fees

The Exchange believes that providing uniform rates for all 1G and 10G physical connections to Exchange is reasonable because such change represents a reduction in fees for any Member that connects to the Exchange at a PoP location and no change to fees for any Member located in the Exchange's primary or secondary data center. The Exchange also believes that the proposal is equitably allocated and not unreasonably discriminatory because, as proposed, market participants will be able to access the Exchange at uniform rates regardless of whether such access is at the Exchange's primary or secondary data center location or another location where the Exchange offers access.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed amendments to its fee schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Standard Remove Rebate

The Exchange does not believe that its proposal to amend the standard rebate for orders that remove liquidity from the Exchange would burden competition, but, rather, enhance the Exchange's ability to compete with other market centers. As described above, the Exchange believes that the reduced rebate would allow the Exchange opportunities to use the cost savings in order to enhance other components of the Exchange, including offering enhanced rebates, reduced fees, and improved technology on the Exchange, which the Exchange believes would better equip it to compete with other market centers.

NBBO Setter Tier

The Exchange does not believe that its proposal to eliminate the NBBO Setter Tier would burden competition, but, rather, enhance the Exchange's ability to compete with other market centers. As described above, the Exchange believes that it is offering a reduction in fees for orders that would be submitted to the Exchange without the reduced fee, which prevents the Exchange from being able to offer other rebates or reduced fees that might be able to enhance market quality to the benefit of all Members. As such, eliminating the NBBO Setter Tier will allow the Exchange other opportunities to enhance market quality on the Exchange and ultimately, better compete with other market centers.

Physical Connection Fees

The Exchange does not believe that the proposed change to physical port fees represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Rather, as described above, the Exchange is simply normalizing its fees for physical access to the Exchange regardless of the location where a physical connection is made. The offering is consistent with the Exchange's own economic incentives to facilitate as many market participants as possible in connecting to its market. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange does not believe that its proposal would burden intramarket competition because the fees for physical connections would apply uniformly to all Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BYX–2015–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2015–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2015–24, and should be submitted on or before June 8, 2015. June 5, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11879 Filed 5–15–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74928; File No. SR–NYSE–2015–18]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Constituent Documents of Its Intermediate Parent Companies NYSE Holdings LLC., Intercontinental Exchange, Inc., To Eliminate Certain Provisions That by Their Terms Have Become Void and Are of No Further Force and Effect as a Result of the Sale by ICE of Euronext N.V. in June 2014 and Make Conforming Changes to the Independence Policy of the Board of Directors of ICE

May 12, 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 1, 2015, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') 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 Substance of the Proposed Rule Change

The Exchange proposes to amend the constituent documents of its intermediate parent companies NYSE Holdings LLC, a Delaware limited liability company (''NYSE Holdings''), and Intercontinental Exchange Holdings, Inc., a Delaware corporation (''ICE Holdings''), and its ultimate parent company, Intercontinental Exchange, Inc., a Delaware corporation (''ICE''), to eliminate certain provisions that by their terms have become void and are of no further force and effect as a result of the sale by ICE of Euronext N.V. (''Euronext'') in June 2014. The Exchange also seeks approval of conforming changes to the Independence Policy of the Board of Directors of ICE (the ''Independence Policy''). 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange requests approval to amend the constituent documents of its intermediate parent companies NYSE Holdings and ICE Holdings, and of its ultimate parent company, ICE, to eliminate certain provisions that by their terms have become void and are of no further force and effect as a result of the sale by ICE of Euronext in June 2014, upon consummation of which ICE, ICE Holdings and NYSE Holdings ceased to control Euronext.[4] The Exchange also requests approval of conforming changes to the Independence Policy.[5]

The Exchange believes the proposed changes are desirable to avoid the potential for confusion that could arise if ICE, ICE Holdings and NYSE Holdings were to retain in their constituent documents or in the Independence Policy provisions that are no longer operative.

Background

In 2007, the Exchange's direct parent, NYSE Group Inc. (''NYSE Group''), entered into a business combination transaction with Euronext N.V. (''Euronext'') in which NYSE Group and Euronext became wholly owned subsidiaries of a newly formed company, NYSE Euronext, a Delaware corporation. The Certificate of Incorporation and Bylaws of NYSE Euronext included provisions (a) requiring NYSE Euronext and its board of directors to give due consideration to requirements of European law and regulation applicable to the operation of Euronext's European business; (b) requiring NYSE Euronext and its board of directors to cause Euronext's subsidiaries to operate in compliance with applicable law and regulation and to cooperate with European regulators; (c) relating to board compositions and similar matters; and (d) prohibiting the amendment of such provisions without a supermajority vote of the directors in light of Euronext's minority representation on the board (collectively, the ''European Provisions''). NYSE Euronext's

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] ICE, a public company listed on the Exchange, owns 100% of ICE Holdings, which in turn owns 100% of NYSE Holdings. Through ICE Holdings, NYSE Holdings and NYSE Group, Inc., ICE indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the ''NYSE Exchanges'')—the Exchange, NYSE Arca, Inc. (''NYSE Arca'') and NYSE MKT LLC (''NYSE MKT'')—and (2) 100% of the equity interest of NYSE Market (DE), Inc., NYSE Regulation, Inc., NYSE Arca L.L.C. and NYSE Arca Equities, Inc. ICE also indirectly owns a majority interest in NYSE Amex Options LLC. *See* Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE–2013–42; SR–NYSEMKT–2013–50; SR–NYSEArca–2013–62) (''Release No. 70210'') (approving proposed rule change relating to a corporate transaction in which NYSE Euronext will become a wholly owned subsidiary of IntercontinentalExchange Group, Inc.).

[5] The Exchange's affiliates NYSE Arca and NYSE MKT have also submitted the same proposed rule change. *See* SR–NYSEMKT–2015–32 and SR–NYSEArca–2015–33.

Certificate of Incorporation and Bylaws also included provisions for the automatic suspension or voiding of the European Provisions under specified circumstances, including circumstances under which NYSE Euronext no longer exercised a controlling interest (as therein defined) over Euronext (the ''Voiding Provisions'').[6]

In 2013, ICE Holdings (then known as IntercontinentalExchange, Inc.) entered into a business combination transaction with NYSE Euronext in which ICE Holdings and NYSE Holdings (then known as NYSE Euronext Holdings LLC), as successor to NYSE Euronext, became wholly owned subsidiaries of a newly formed company, ICE (then known as IntercontinentalExchange Group, Inc.). In connection with this transaction, the European Provisions and the Voiding Provisions were modified as they applied to NYSE Holdings and were incorporated, in substantially the same modified form, into the Certificate of Incorporation and Bylaws of ICE, along with the Voiding Provisions. In relevant part, the Voiding Provisions applicable to ICE and NYSE Holdings were modified to specify that the European Provisions would automatically become void and be of no further force and effect if at any time ICE or NYSE Holdings, as the case may be, ceased to ''control'' Euronext, with ''control'' defined under International Financial Reporting Standard 10 (as in force at its date of first effectiveness on January 1, 2014), and with cessation of control subject to confirmation from the entity's registered public accountants and to a public disclosure requirement.[7]

In March 2014, in preparation for its announced plan to sell Euronext, ICE contributed its ownership of NYSE Holdings to ICE Holdings, and in connection therewith the Certificate and Bylaws of ICE Holdings were amended to incorporate the modified European Provisions and the modified Voiding Provisions.[8] The Certificate of Incorporation and Bylaws of ICE and of ICE Holdings, and the Limited Liability Company Agreement of NYSE Holdings are referred to collectively as the ''Constituent Documents''.

In June 2014, ICE consummated the sale of substantially all of its interest in Euronext and, accordingly, ceased to control Euronext within the meaning of the Voiding Provisions. As a result, the Voiding Provisions in each of the Constituent Documents were triggered, and the European Provisions in the Constituent Documents automatically became void and are of no further force and effect.[9]

The Exchange accordingly proposes to make the following changes to the constituent documents of ICE, ICE Holdings and NYSE Holdings:

Certificate of Incorporation of ICE. The Amended and Restated Certificate of Incorporation of ICE would be further amended and restated as set forth in Exhibit 5A to update the recitals in the initial certification and to eliminate the following provisions, which have become void and without further force and effect by operation of the indicated section because ICE no longer controls Euronext:

- Pursuant to Art. XIII, Section A.2., the following provisions are void and would be deleted: Art. V, Section A.2.(d); Art. V, Section A.3.(a)(ii), (a)(iii)(z), (b)(ii), (c)(i)(y) and (d)(i)(y); Art. V, Section A.4.(b), A.8, A.9, A.10 and A.11; Art. V, Section B.2.(d); Art. V, Section B.3.(a)(ii), (a)(iii)(z), (b)(ii), (b)(y) and (c)(ii); Art. VII, clause (B); and Art. X, clause (B).
- In addition, the phrases ''or any European Market Subsidiary (as defined below)'' has been deleted from Art V, Section A.1., and the phrase ''or any European Market Subsidiary'' has been deleted from Art. V, Section B.1., in each case because the phrase refers to a term that is no longer used in the document.
- In Art. V, Section A.3.(a)(i), a reference has been added to ICE Holdings and the erroneous name NYSE Euronext LLC has been corrected to refer to NYSE Holdings LLC. Additionally, references to ICE Holdings and NYSE Holdings have been added to Art. V, Section B.3.(a)(i). These matters were previously addressed in the last sentence of Section 3.15(g) of the Bylaws of ICE.
- Art. XIII itself is deleted because its sole purpose was to define the circumstances under which ICE would no longer control Euronext and to specify the provisions that became void upon such event. The Exchange believes it would be confusing to retain Art. XIII because it refers to events that have occurred and to provisions that will have been deleted.
- Art. XIV, establishing an effective time for the document, has been deleted because the effective time is addressed in the initial certification.

Bylaws of ICE. The Fourth Amended and Restated Bylaws of ICE would be further amended and restated as set forth in Exhibit 5B to eliminate the following provisions, which have become void and without further force and effect by operation of the indicated section because ICE no longer controls Euronext:

- Pursuant to Section 10.9(b)(3), the following provisions are void and would be deleted: Sections 3.14(a)(1), 3.14(b)(2), 3.14(b)(4), 3.14(b)(6), 7.2, 8.1(b), 8.2(b), 8.2(c)(2), 8.3(b), 8.3(d), 8.5, 9.2, 9.5, and 10.8; each occurrence of the words ''pursuant to a resolution adopted by at least 75% of the directors then in office'' in Section 3.1; and additionally Sections 3.15(a), 3.15(b), 3.15(c), 3.15(d), 3.15(e), 3.15(f), 11.1(b), 11.2(b) and 11.3(A).
- In Section 3.1, where the reference to 75% of the directors then in office is eliminated, the standard for setting the number of directors is set to a majority of the directors then in office, which was the standard in effect at NYSE Group prior to the Euronext transaction in 2007.
- In Section 3.5, a provision calling for one board meeting to be held in Europe in each year is deleted. This provision was included to accommodate the interests of the Euronext-affiliated directors and, while it was not identified for automatic deletion, ICE views the requirement as imposing an unnecessary expense on ICE and believes the venue of meetings should be in the discretion of management.
- The last sentence of Section 3.15(g) (which will be redesignated Section 3.15) is deleted for the reasons discussed above under ''Certificate of Incorporation of ICE''.
- Section 8.6, applicable to records that relate to both a European Market Subsidiary and a U.S. Regulated Subsidiary, has been deleted because the definition of European Market Subsidiary and all other references to the term have been deleted.
- Section 10.9 is deleted in its entirety for the reasons set forth above relating to Article XIII of the Certificate of Incorporation of ICE, and also because Section 10.9 refers to Stichting NYSE Euronext and its Articles of Formation, which no longer asserts any authority over ICE.[10]

Independence Policy. The Independence Policy would be revised

[6] *See* Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (Feb. 22, 2007) (SR–NYSE–2006–120).

[7] *See* Exchange Act Release No. 70210, 78 FR at 51758.

[8] *See* Exchange Act Release No. 71721 (Mar. 13, 2014), 79 FR 15367 (Mar. 19, 2014) (SR–NYSE–2014–04; SR–NYSEMKT–2014–10; SR–NYSEArca–2014–08).

[9] *See* Exchange Act Release No. 73740 (Dec. 4, 2014), 79 FR 73362 (Dec. 10, 2014) (''Release No. 73740'') (SR–NYSE–2014–53; SR–NYSEMKT–2014–83; SR–NYSEArca–2014–112), for additional information about the events that resulted in the triggering of the Voiding Provisions.

[10] *See* Release No. 73740, 79 FR at 73362 and note 9, *supra.*

to eliminate from paragraph 3 the references to European securities exchanges and European regulatory authorities that are no longer controlled by, or regulators of entities controlled by, ICE. *See* Exhibit 5C.

Certificate of Incorporation of ICE Holdings. The Sixth Amended and Restated Certificate of Incorporation of ICE Holdings would be further amended and restated as set forth in Exhibit 5D to update the recitals in the initial certification and to eliminate the following provisions, which have become void and without further effect by operation of the indicated section because ICE Holdings no longer controls Euronext:

• Pursuant to Art. XIII, Section A.2., the following provisions are void and would be deleted: Art. V, Section A.2.(d); Art V, Section A.3.(a)(ii), (a)(iii)(z), (b)(ii), (c)(i)(y) and (d)(i)(y); Art. V, Section A.4.(b), A.8, A.9, A.10 and A.11; Art. V, Section B.2.(d); Art. V, Section B.3.(a)(ii), (a)(iii)(z), (b)(ii), (b)(y) and (c)(ii); Art. VII, clause (B); and Art. X, clause (B).

• In addition, the phrases ''or any European Market Subsidiary (as defined below)'' has been deleted from Art. V, Section A.1., and the phrase ''or any European Market Subsidiary'' has been deleted from Art. V, Section B.1., in each case because the phrase refers to a term that is no longer used in the document.

• Art. XIII itself is deleted for the same reasons as discussed above for ICE.

Bylaws of ICE Holdings. The Third Amended and Restated Bylaws of ICE Holdings would be further amended and restated as set forth in Exhibit 5E to eliminate the following provisions, which have become void and without further force and effect by operation of the indicated section because ICE Holdings no longer controls Euronext:

• Pursuant to Section 10.9(b)(3), the following provisions are void and would be deleted: Sections 3.14(a)(1), 3.14(b)(2), 3.14(b)(4), 3.14(b)(6), 7.2, 8.1(b), 8.2(b), 8.2(c)(2), 8.3(b), 8.3(d), 8.5, 9.2, 9.5, and 10.8; each occurrence of the words ''pursuant to a resolution adopted by at a majority of the directors then in office'' in Section 3.1; and additionally Sections 3.15(a), 3.15(b), 3.15(c), 3.15(d), 3.15(e), 3.15(f), 11.1(b), 11.2(b) and 11.3(A).

• In Section 3.5, a provision calling for one board meeting to be held in Europe in each year is deleted, for the reasons discussed above under ''Bylaws of ICE.''

• Section 8.6 is deleted for the reasons discussed above under ''Bylaws of ICE''.

• Section 10.9 is deleted in its entirety for the reasons set forth above under ''Bylaws of ICE''.

Limited Liability Company Agreement of NYSE Holdings. The Sixth Amended and Restated Limited Liability Company Agreement of NYSE Holdings would be further amended and restated as set forth in Exhibit 5F to update the recitals and to eliminate the following provisions, which have become void and without further force and effect by operation of the indicated section because NYSE Holdings no longer controls Euronext:

• Pursuant to Section 16.3(b)(3), the following provisions are void and would be deleted: Sections 3.12(b)(1), 3.12(c)(2), 3.12(c)(4), 3.12(c)(6),[11] 12.1(b), 12.2(b), 12.2(c)(ii), 12.3(b), 12.3(d), 12.4(b), 13.2, 14.2, 14.5, and 16.2; and, additionally, Sections 4.1(b), 9.1(a)(2)(d), 9.1(a)(3)(A)(ii), 9.1(a)(3)(A)(iii)(z), 9.1(a)(3)(B)(ii), 9.1(a)(3)(C)(i)(y), 9.1(a)(3)(D)(i)(y),[12] 9.1(a)(4)(b),[13] 9.1(b)(2)(d), 9.1(b)(3)(A)(ii), 9.1(b)(3)(A)(iii)(z), 9.1(b)(3)(B)(ii), 9.1(b)(3)(B)(y), 9.1(b)(3)(C)(ii), 16.1(a)(A) and 16.1(b), and the definitions of ''Euronext College of Regulators'', ''European Exchange Regulations'', ''European Regulated Market'', ''European Regulator'', ''European Market Subsidiary'' and ''Europe'' set forth in Section 1.1.

• Additional definitions that define terms no longer used in the document also are deleted from Section 1.1: ''Euronext'', ''Euronext Call Option'', ''Euronext Transaction Time'', ''European Disqualified Person'', ''European Subsidiaries' Confidential Information'', ''Execution Date'', ''Extraordinary Transaction'', ''Foundation'', ''Governmental Entity'' (and the reference to such term in the definition of ''Law''), ''Merger'' and ''Priority Shares''.

• Certain cross-references have been corrected in the definitions of ''ETP Holder'', ''MKT Member'', ''NYSE Arca'', ''NYSE Arca Equities'', ''NYSE Market'', ''NYSE Member'', ''NYSE MKT'', ''OTP Firm'', ''OTP Holder'' and ''U.S. Disqualified Person''.

• In Section 3.7, a provision calling for one board meeting to be held in Europe in each year is deleted for the reasons discussed above under ''Bylaws of ICE''.

• References to European filing requirements have been eliminated from Section 7.2.

• Section 12.4(c), applicable to records that relate to both a European Market Subsidiary and a U.S. Regulated Subsidiary, has been deleted for the reasons discussed above under ''Bylaws of ICE,'' Section 8.6.

• Section 16.3 itself is deleted for the reasons discussed under ''Certificate of Incorporation of ICE'' with reference to Art. XIII.

• The phrase ''or any European Market Subsidiary'' has been eliminated from Sections 9.1(a)(1) and 9.1(b)(1), in each case because the phrase refers to a term that is no longer used in the document.

In each case, where a provision being eliminated falls within a numbered or lettered list, the subsequent numbers or letters, as the case may be, and related cross-references have been adjusted for continuity. In some cases where a list contains only a small number of items after eliminations, the number or lettering has been removed entirely.

Other non-substantive conforming changes have been made as appropriate for clarity and consistency.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act [14] in general, and with Section 6(b)(1) [15] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The European Provisions were implemented at a time when the Exchange was owned by a company with substantial holdings of non-U.S. securities exchanges, substantial non-U.S. board representation, and explicit obligations on the part of its board to give due consideration to matters of non-U.S. law and the interests of non-U.S. stakeholders. In light of the elimination of these concerns and the concomitant voiding of the European Provisions, the Exchange believes that the proposed rule change is consistent with Section 6(b)(1).

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act [16] because

[11] The four subsections of Section 3.12 are mistakenly identified in Section 16.3(a) as subsections of Section 3.11.

[12] Sections 9.1(a)(3)(B)(ii), 9.1(a)(3)(C)(i)(y) and 9.1(a)(3)(D)(i)(y) are mistakenly identified in Section 16.3 as subsections of Section 9.1(c)(3) rather than Section 9.1(a)(3).

[13] Section 9.1(a)(4)(b) is mistakenly identified in Section 16.3 as a subsection of Section 9.1(c)(4) rather than Section 9.1(a)(4).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(1).

[16] 15 U.S.C. 78f(b)(5).

the proposed rule change would be consistent with and facilitate a governance and regulatory structure that 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that elimination of the European Provisions (which by their terms are now void and of no further force and effect) will remove impediments to the operation of the Exchange by eliminating the potential for uncertainty among analysts and investors as to the practical implications of the European Provisions on the Exchange as a marketplace and as a significant asset of ICE if they remain in the Constituent Documents notwithstanding their vitiation by the Voiding Provisions. For the same reasons, the proposed rule change is also designed to protect investors as well as the public interest.

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 Exchange Act. The proposed rule change would shorten and simplify the Constituent Documents and the ICE Directors Independence Policy without making any substantive changes, thereby enhancing their transparency. The proposed rule change would result in no concentration or other changes of ownership of exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18] Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[20] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that such waiver would accommodate the timing of the effectiveness under the Delaware General Corporation Law of the Second Amended and Restated Certificate of Incorporation of ICE, which the Exchange represents will be filed in Delaware upon approval by the stockholders of ICE at the annual meeting of stockholders scheduled for May 2015. The Exchange believes that waiving the 30-day operative delay would permit the modifications to occur at an earlier time and thereby reduce the potential for confusion among persons reading the Constituent Documents. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[22]

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–NYSE–2015–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2015–18, and should be submitted on or before June 8, 2015.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission 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. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has 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.[23]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11870 Filed 5–15–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74935; File No. SR–EDGX–2015–19)

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Change the Name of ''ConnectEdge'' Product Offering Under Rule 13.9 to ''BATS Connect''

May 12, 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 April 28, 2015, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to change the name of ''ConnectEdge'' under Rule 13.9 to ''BATS Connect''.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In early 2014, the Exchange and its affiliate, EDGA Exchange, Inc. (''EDGA''), received approval to effect a merger (the ''Merger'') of the Exchange's parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BZX and BYX (together with BZX, EDGA, and EDGX, the ''BGM Affiliated Exchanges'').[5] The Exchange proposes to change the name of ''ConnectEdge'' under Rule 13.9 to ''BATS Connect'' to more closely align with the Exchange's parent company, BATS Global Markets, Inc.

ConnectEdge is a communication and routing service that provides Members an additional means to receive market data from and route orders to any destination connected to the Exchange's network. ConnectEdge does not affect trade executions and would not report trades to the relevant Securities Information Processor. The servers of the Member need not be located in the same facilities as the Exchange in order to subscribe to ConnectEdge. Members may also seek to utilize ConnectEdge in the event of a market disruption where other alternative connection methods become unavailable.[6] The Exchange does not propose to amend the content or services available via the ConnectEdge offering. The proposal only seeks to change the name of ''ConnectEdge'' under Rule 13.9 to ''BATS Connect''.

Lastly, the Exchange proposes to correct a typographical error within Rule 13.9 by inserting the word ''the'' before ''Exchanges network.''

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed 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. The Exchange does not propose to amend the content or services available via the renamed BATS Connect offering. It simply proposes to change the name of ''ConnectEdge'' to ''BATS Connect'' under Rule 13.9 and to correct a typographical error. Therefore, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act[9] because the new name will avoid investor confusion by more closely aligning the BATS Connect product with the Exchange's parent company, BATS Global Markets, Inc.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not affect competition as it is not designed to amend the content or services available via the renamed BATS Connect offering. It is simply intended to correct a typographical error and more closely align the renamed BATS Connect product with the Exchange's parent company, BATS Global Markets, Inc.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule

[23] 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)(6)(iii).

[5] *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–043; SR–EDGA–2013–034).

[6] This service is an alternative to a service that the Exchange already provides to its Members — current order-sending Members route orders through access provided by the Exchange to the Exchange that either check the Exchange for available liquidity and then route to other destinations or, in certain circumstances, bypass the Exchange and route to other destinations. *See* Exchange Rule 11.11(g) (setting forth routing options whereby Members may select their orders be routed to other market centers). *See also* Securities Exchange Act Release No. 73780 (December 8, 2014), 79 FR 73942 (December 12, 2015) (SR–EDGX–2014–28) (proposing to amend Exchange Rule 13.9 for immediate effectiveness relating to a communication and routing service known as ConnectEdge).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

19b–4(f)(6) thereunder.[11] 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would permit the Exchange to change the name of ConnectEdge to BATS Connect prior to the inclusion of the product offering on the Exchange's fee schedule effective May 1, 2015. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

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–EDGX–2015–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2015–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2015–19 and should be submitted on or before June 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11876 Filed 5–15–15; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 240.19b–4(f)(6).

[12] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court of Oregon, Portland Division, entered October 15, 2014, the United States Small Business Administration hereby revokes the license of Smart Forest Ventures I. L.P., a Delaware Limited Partnership, to function as a small business investment company under the Small Business Investment Company License No. 10700195 issued to Smart Forest Ventures I, L.P., on January 19, 2001, and said license is hereby declared null and void as of October 15, 2014.

United States Small Business Administration.

Dated: May 8, 2015.

Javier Saade,

Acting Associate Administrator for Investment.

[FR Doc. 2015–11887 Filed 5–15–15; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14306 and #14307]

MARYLAND Disaster # MD–00028

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Maryland dated 05/11/2015.

Incident: Civil Disorder.

Incident Period: 04/25/2015 through 05/03/2015.

EFFECTIVE DATE: 05/11/2015.

Physical Loan Application Deadline Date: 07/10/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 02/11/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Baltimore City.
Contiguous Counties:

Maryland: Anne Arundel, Baltimore.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14306 F and for economic injury is 14307 0.

The States which received an EIDL Declaration # are Maryland.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2015–11886 Filed 5–15–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14268 and #14269]

Connecticut Disaster Number CT–00034

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Connecticut (FEMA–4213–DR), dated 04/08/2015.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 01/26/2015 through 01/28/2015.

Effective Date: 05/08/2015.

Physical Loan Application Deadline Date: 06/08/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 01/08/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Connecticut, dated 04/08/2015, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: New Haven.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–11884 Filed 5–15–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14257 and #14258]

West Virginia Disaster #WV–00035

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA–4210–DR), dated 03/31/2015.

Incident: Severe Winter Storm, Flooding, Landslides, and Mudslides.

Incident Period: 03/03/2015 through 03/14/2015.

DATES: *Effective Date:* 05/08/2015.

Physical Loan Application Deadline Date: 06/01/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 12/31/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of WEST VIRGINIA, dated 03/31/2015, is hereby amended to establish the incident period for this disaster as beginning 03/03/2015 and continuing through 03/14/2015.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator, for Disaster Assistance.

[FR Doc. 2015–11883 Filed 5–15–15; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2014–0066]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Office of Personnel Management (OPM)—Match Number 1307

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program that will expire on July 14, 2015.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with OPM.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the

conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Kirsten J. Moncada,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA With the Office of Personnel Management (OPM)

A. Participating Agencies

SSA and OPM.

B. Purpose of the Matching Program

The purpose of this matching program is to set forth the terms, conditions, and safeguards under which OPM will provide us with civil service benefit and payment data. This disclosure will provide us with information necessary to verify an individual's self-certification of eligibility for the Extra Help with Medicare Prescription Drug Plan Costs program (Extra Help). It will also enable us to identify individuals who may qualify for Extra Help as part of our Medicare outreach efforts.

C. Authority for Conducting the Matching Program

The legal authority for OPM to disclose information under this agreement is 42 U.S.C. 1383(f). The legal authority for us to conduct this matching program is 42 U.S.C. 1320b–14(a)(1) and (b)(1) and 1395w–114(a)(3).

D. Categories of Records and Persons Covered by the Matching Program

OPM will electronically furnish the following information to us: Name, Social Security number, civil service claim number, and amount of current gross civil service benefits.

E. Inclusive Dates of the Matching Program

The effective date of this matching program is July 15, 2015 provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and, if both agencies meet certain conditions, it may extend for an additional 12 months thereafter.

[FR Doc. 2015–11895 Filed 5–15–15; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 9135]

List of September 20, 2005, of Participating Countries and Entities in the Kimberley Process Certification Scheme, Known as ''Participants'' for the Purposes of the Clean Diamond Trade Act of 2003 (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003.

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: In accordance with Sections 3 and 6 of the Clean Diamond Trade Act of 2003 (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003, the Department of State is updating the list of Participants eligible for trade in rough diamonds under the Act, and their respective Importing and Exporting Authorities, revising the previously published list of August 11, 2014 to reflect certain technical revisions of the List; to maintain temporary self-suspension of Venezuela from trade under the Kimberley Process as of November 4, 2010; and to maintain the suspension of the Central African Republic from trade under the Kimberley Process as of May 23, 2013.

FOR FURTHER INFORMATION CONTACT: Ashley Orbach, Special Advisor, Bureau of Economic and Business Affairs, Department of State, (202) 647–2856.

SUPPLEMENTARY INFORMATION: Section 4 of the Clean Diamond Trade Act (the ''Act'') requires the President to prohibit the importation into, or the exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme (KPCS). Under Section 3(2) of the Act, ''controlled through the Kimberley Process Certification Scheme'' means an importation from the territory of a Participant or exportation to the territory of a Participant of rough diamonds that is either (i) carried out in accordance with the KPCS, as set forth in regulations promulgated by the President, or (ii) controlled under a system determined by the President to meet substantially the standards, practices, and procedures of the KPCS. The referenced regulations are contained at 31 CFR part 592 (''Rough Diamond Control Regulations'')(68 FR 45777, August 4, 2003).

Section 6(b) of the Act requires the President to publish in the **Federal Register** a list of all Participants, and all Importing and Exporting Authorities of Participants, and to update the list as necessary. Section 2 of Executive Order 13312 of July 29, 2003 delegates this function to the Secretary of State. Section 3(7) of the Act defines ''Participant'' as a state, customs territory, or regional economic integration organization identified by the Secretary of State. Section 3(3) of the Act defines ''Exporting Authority'' as one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate a Kimberley Process Certificate. Section 3(4) of the Act defines ''Importing Authority'' as one or more entities designated by a Participant into whose territory a shipment of rough diamonds is imported as having the authority to enforce the laws and regulations of the Participant regarding imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

List of Participants

Pursuant to Sections 3 and 6 of the Act, Section 2 of Executive Order 13312, Department of State Delegation of Authority No. 245–1 (February 13, 2009), and the Delegation of Authority from the Deputy Secretary to the Under Secretary dated October 31, 2011, I hereby identify the following entities as

of November 14, 2014, as Participants under section 6(b) of the Act. Included in this List are the Importing and Exporting Authorities for Participants, as required by Section 6(b) of the Act. This list revises the previously published list of August 11, 2014, to reflect certain technical revisions to the List, to add Mali to the List, to maintain the temporary self-suspension of Venezuela from trade under the Kimberley Process as of November 4, 2010, and to maintain the suspension of the Central African Republic from trade under the Kimberley Process as of May 23, 2013.

Angola—Ministry of Geology and Mines.

Armenia—Ministry of Trade and Economic Development.

Australia—Exporting Authority—Department of Industry, Tourism and Resources; Importing Authority—Australian Customs Service.

Bangladesh—Ministry of Commerce.

Belarus—Department of Finance.

Botswana—Ministry of Minerals, Energy and Water Resources.

Brazil—Ministry of Mines and Energy.

Cambodia—Ministry of Commerce.

Cameroon—National Permanent Secretariat for the Kimberley Process in Cameroon.

Canada—Natural Resources Canada.

China—General Administration of Quality Supervision, Inspection and Quarantine.

Congo, Democratic Republic of the—Ministry of Mines.

Congo, Republic of the—Ministry of Mines.

Cote D'Ivoire (Ivory Coast)—Ministry of Mines and Energy.

European Union—DG/External Relations/A.2.

Ghana—Precious Minerals and Marketing Company Ltd.

Guinea—Ministry of Mines and Geology.

Guyana—Geology and Mines Commission.

India—The Gem and Jewelry Export Promotion Council.

Indonesia—Directorate General of Foreign Trade of the Ministry of Trade.

Israel—The Diamond Controller.

Japan—Ministry of Economy, Trade and Industry.

Kazakhstan—Ministry of Finance.

Korea, South—Ministry of Commerce, Industry and Energy.

Laos—Ministry of Finance.

Lebanon—Ministry of Economy and Trade.

Lesotho—Commissioner of Mines and Geology.

Liberia—Ministry of Lands, Mines and Energy.

Malaysia—Ministry of International Trade and Industry.

Mali—Office of Expertise, Evaluation and Certification of Rough Diamonds.

Mauritius—Ministry of Commerce.

Mexico—Economic Secretariat.

Namibia—Ministry of Mines and Energy.

New Zealand—Ministry of Foreign Affairs and Trade.

Norway—The Norwegian Goldsmiths' Association.

Panama—National Customs Authority.

Russia—Ministry of Finance.

Sierra Leone—Government Gold and Diamond Office.

Singapore—Singapore Customs.

South Africa—South African Diamond Board.

Sri Lanka—National Gem and Jewellery Authority.

Swaziland—Office of the Commissioner of Mines.

Switzerland—State Secretariat for Economic Affairs.

Taiwan (Participating as Chinese Taipei—Bureau of Foreign Trade.

Tanzania—Commissioner for Minerals.

Thailand—Ministry of Commerce.

Togo—Ministry of Mines and Geology.

Turkey—Istanbul Gold Exchange.

Ukraine—State Gemological Centre of Ukraine.

United Arab Emirates—Dubai Metals and Commodities Center.

United States of America—Importing Authority—United States Bureau of Customs and Border Protection; Exporting Authority—United States Census Bureau.

Vietnam—Ministry of Trade.

Zimbabwe—Ministry of Mines and Mining Development.

This notice shall be published in the **Federal Register**.

Catherine A. Novelli,

Under Secretary of State, Department of State.

[FR Doc. 2015–12001 Filed 5–15–15; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2015–28]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on this petition must identify the petition docket number and must be received on or before June 8, 2015.

ADDRESSES: You may send comments identified by Docket Number FAA–2015–0726 using any of the following methods:

- *Government-Wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alphonso Pendergrass (202) 267–4713. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 13, 2015.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–0726.

Petitioner: Mr. Michael H. LeMee, MED-Trans Corporation.

Section of 14 CFR Affected: § 43.3(a).

Description of Relief Sought: On behalf of MED-Trans Corporation, Mr. Michael LeMee petitions the FAA for an exemption from 14 CFR 43.3(a) to allow properly trained medical personnel to perform the insertion and removal of litter systems, isolettes and secondary stretcher systems in the EC–135 and EC–155 aircraft operated by MED-Trans Corporation.

[FR Doc. 2015–11913 Filed 5–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) Transport Airplane and Engine (TAE) Subcommittee to discuss TAE issues.

DATES: The meeting is scheduled for Wednesday, June 03, 2015, starting at 9:00 a.m. EST. The public must make arrangements by June 01, 2015, to present oral statements at the meeting.

ADDRESSES: 929 Long Bridge Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Ralen Gao, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–3168, FAX (202) 267–5075, or email at *ralen.gao@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. 2), notice is given of an ARAC Subcommittee meeting to be held on Wednesday, June 03, 2015.

The agenda for the meeting is as follows:

- FAA Report
- ARAC Report
- Transportation Canada Report
- EASA Report
- Engine Harmonization Working Group Report—Engine Endurance Testing
- Airworthiness Assurance Working Group Report
- Flight Test Harmonization Working Group Report
- Materials Flammability Working Group Report
- Transport Airplane Metallic and Composite Structures Working Group Report
- Any other business

Participation is open to the public, but will be limited to the availability of teleconference lines.

To participate, please contact the person listed in **FOR FURTHER INFORMATION** by email or phone for the teleconference call-in number and passcode. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are participating as a public citizen, please indicate so. Anyone calling from outside the Arlington, VA, metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by June 01, 2015, to present oral or written statements at the meeting. Written statements may be presented to the Subcommittee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Copies of the documents to be presented to the Subcommittee may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC, on May 12, 2015.

Lirio Liu,

Designated Federal Officer.

[FR Doc. 2015–11881 Filed 5–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2015–23]

Petition for Exemption; Summary of Petition Received; American Airlines, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 8, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–0409 using any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

Mail: Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

Hand Delivery or Courier: Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: Fax comments to Docket Operations at 202–493–2251.

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Valentine Castaneda (202) 267–7977, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 12, 2015.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–0409.

Petitioner: American Airlines, Inc.

Section(s) of 14 CFR Affected: 14 CFR part 121.

Description of Relief Sought: American Airlines, Inc. is seeking relief from the requirements of 14 CFR 121.311(b), to the extent required for infants/children traveling on American Airlines to be able to use an FAA-approved Child Restraint System (CRS) in an obliquely oriented seat (not forward facing) on Boeing 777 and Boeing 787 aircraft during all phases of flight.

[FR Doc. 2015–11882 Filed 5–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2015–24]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 8, 2015.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0221 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alphonso Pendergrass (202) 267–4713.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 13, 2015.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0221.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: §§ 61.75(d)(2) and 61.117.

Description of Relief Sought

Petitioner requests amendments to the conditions and limitations of Exemption No. 10871, as amended. That exemption allows certain foreign pilots exercising private pilot privileges to act as a flight crewmember on Boeing aircraft that are being used to conduct evaluation and demonstration flights. The amendments requested by The Boeing Company would expand the types of evaluation and demonstration flights allowed under the exemption, and would add relief to carry additional supernumeraries on those flights.

[FR Doc. 2015–11912 Filed 5–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic steel cable nets for truck escape ramps used in a dragnet impact absorption system on State route (SR) 431, US550, and SR163 in the State of Nevada.

DATES: The effective date of the waiver is May 19, 2015.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via email at *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. Jomar Maldonado, FHWA Office of the Chief Counsel, (202) 366–1373, or via email at *Jomar.Maldonado@dot.gov.* Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for use of non-domestic steel cable nets used in a dragnet impact absorption system for truck escape ramps on SR431, US550, and SR163 in the State of Nevada.

In accordance with Division K, section 122 of the ''Consolidated and Further Continuing Appropriations Act, 2015'' (Pub. L. 113–235), FHWA published a notice of intent to issue a

waiver on its Web site for non-domestic steel cable nets (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=107*) on April 6. The FHWA received no comments in response to the publication. During the 15-day comment period, FHWA conducted additional review to locate potential domestic manufacturers of steel cable nets for dragnet impact absorption system. Based on all the information available to the agency, FHWA concludes that there are no domestic manufacturers of the of the steel cable nets for the dragnet impact absorption system for truck escape ramps on SR431, US550, and SR163 in the State of Nevada.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the Nevada waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410

Issued on: May 8, 2015.

Gregory G. Nadeau,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 2015–11905 Filed 5–15–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic steel cable nets for truck escape ramps used in a dragnet impact absorption system on State route (SR) 431, US550, and SR163 in the State of Nevada.

DATES: The effective date of the waiver is May 19, 2015.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via email at *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. Jomar Maldonado, FHWA Office of the Chief Counsel, (202) 366–1373, or via email at *Jomar.Maldonado@dot.gov.* Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for use of non-domestic steel cable nets used in a dragnet impact absorption system for truck escape ramps on SR431, US550, and SR163 in the State of Nevada.

In accordance with Division K, section 122 of the ''Consolidated and Further Continuing Appropriations Act, 2015'' (Pub. L. 113–235), FHWA published a notice of intent to issue a waiver on its Web site for non-domestic steel cable nets (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=107*) on April 6. The FHWA received no comments in response to the publication. During the 15-day comment period, FHWA conducted additional review to locate potential domestic manufacturers of steel cable nets for dragnet impact absorption system. Based on all the information available to the agency, FHWA concludes that there are no domestic manufacturers of the of the steel cable nets for the dragnet impact absorption system for truck escape ramps on SR431, US550, and SR163 in the State of Nevada.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the Nevada waiver page noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410)

Issued on: May 6, 2015.

Gregory G. Nadeau,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 2015–11904 Filed 5–15–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, US 50/Rancho Cordova Parkway, Sacramento County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before October 15, 2015. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Kendall Schinke, Environmental Branch Chief, California Department of Transportation, District 3, 2379 Gateway Oaks Drive, Suite 150, Sacramento, CA 95833; Telephone (916) 274–0610 or email *Kendall.schinke@dot.ca.gov. Normal business hours are:* 8:00 a.m. to 5:00 p.m. Pacific Time.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the

State of California: New interchange over U.S. 50 between Sunrise Boulevard and Hazel Avenue in the City of Rancho Cordova. The interchange would be a ''south-only'' connection and would also include construction of a new four-lane arterial street, called Rancho Cordova Parkway. Rancho Cordova Parkway would extend from the new interchange south to a new signalized intersection with White Rock Road. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on April 1, 2014, in the FHWA Finding of No Significant Impact (FONSI) issued on April 28, 2015, and in other documents in the FHWA project records. The EA, FONSI and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans EA and FONSI can be viewed and downloaded from the project Web site at *http://ranchocordovainterchange.net/* or viewed at City of Rancho Cordova City Hall, Caltrans District 3, Gateway Oaks Office, or public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]
2. Clean Air Act [42 U.S.C. 7401–7671(q)]
3. Clean Water Act [33 U.S.C. 1251 *et seq.*]
4. Federal Endangered Species Act [16 U.S.C. 1531 *et seq.*]
5. U.S. Department of Transportation Act [49 U.S.C. 303]
6. Floodplain Management, Executive Order 11988
7. Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, Executive Order 12898

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1)

Gary Sweeten,

North Team Leader, Project Delivery Team, Federal Highway Administration, Sacramento, California.

[FR Doc. 2015–11909 Filed 5–15–15; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request; Financial Research Fund

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury invites the general public and other Federal agencies to comment on an extension of an existing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department of the Treasury is soliciting comments concerning the Authorization Agreement for Preauthorized Payments, which is scheduled to expire July 31, 2015.

DATES: Written comments must be received on or before July 17, 2015 to be assured of consideration.

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

Email: FRFassessments@treasury.gov. The subject line should contain the OMB number and title for which you are commenting.

Mail: The Treasury Department, Attn: Financial Research Fund Assessment Comments, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

All responses to this notice will be included in the request for OMB's approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection can be directed to the addresses provided above.

SUPPLEMENTARY INFORMATION:

OMB Number: 1505–0245.

Type of Review: Revision of a currently approved collection.

Title: Authorization Agreement for Preauthorized Payments.

Form: TD F 105.1.

Abstract: The Financial Research Fund (FRF) Preauthorized Payment Agreement form will collect information in order to operationalize the final rule and interim final rule on the assessment of fees on large bank holding companies and nonbank financial companies supervised by the FRB to cover the expenses of the FRF.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Hours per Response: 0.50.

Estimated Total Annual Burden Hours: 25.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 12, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–11830 Filed 5–15–15; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease of Department of Veterans Affairs Real Property for the Development of Housing Facilities in Chillicothe, Ohio

AGENCY: Department of Veterans Affairs.

ACTION: Amended Notice of Intent to Enter into an Amended Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to amend the scope and terms of an existing EUL that was entered into on December 30, 2011, for certain land for the purpose of rehabilitating three buildings and developing units of supportive housing for Veterans.

FOR FURTHER INFORMATION CONTACT: Edward L. Bradley III, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7778.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Veterans Affairs (VA) intends to amend the scope and terms of an existing EUL that was entered into on December 30, 2011, for three parcels, a total of approximately 17.5 acres of land for the purpose of rehabilitating three buildings and

developing 310 units of supportive housing for Veterans. Since that time market conditions have changed making the original scope infeasible. This notice provides details on the scope of the amended EUL. The EUL lessee will finance, design, develop, manage, maintain, and operate, in two phases, 100 units of housing for eligible homeless Veterans, or Veterans at risk of homelessness, and their families, on a priority placement basis, and provide supportive services that guide resident Veterans toward attaining long-term self-sufficiency. As required under Section 211(b)(2)(B) of Public Law 112–154, because the EUL was entered into prior to January 1, 2012, this amended EUL will adhere to the prior version of VA's EUL statute as in effect on August 5, 2011.

Dated: May 13, 2015.

Jeffrey M. Martin,

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

[FR Doc. 2015–11898 Filed 5–15–15; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 80 Monday,
No. 95 May 18, 2015

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 4, 5, 7, et al.
Integration of National Bank and Federal Savings Association Regulations: Licensing Rules; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 4, 5, 7, 14, 24, 32, 34, 100, 116, 143, 144, 145, 146, 150, 152, 159, 160, 161, 162, 163, 174, 192, 193

[Docket ID OCC–2014–0007]

RIN 1557–AD80

Integration of National Bank and Federal Savings Association Regulations: Licensing Rules

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting a final rule to integrate its rules relating to policies and procedures for corporate activities and transactions involving national banks and Federal savings associations, to revise some of these rules in order to eliminate unnecessary requirements consistent with safety and soundness and to promote fairness in supervision, and to make other technical and conforming changes. The OCC also is adopting amendments to update its rules for agency organization and function.

DATES: This final rule is effective July 1, 2015.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Heidi Thomas, Special Counsel; Melissa Lisenbee, Attorney; or Stuart Feldstein, Director, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597; Kevin Corcoran, Assistant Director, or Richard Cleva, Senior Counsel, Bank Activities and Structure, (202) 649–5500; or Stephen Lybarger, Deputy Comptroller for Licensing, (202) 649–6319, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[1] transferred to the OCC all functions of the former Office of Thrift Supervision (OTS) and the Director of the OTS relating to Federal savings associations.[2] As a result, the OCC is now responsible for the ongoing examination, supervision, and regulation of Federal savings associations, in addition to national banks and Federal branches and agencies. With some exceptions, the OCC has one set of rules applicable to national banks and another set of rules applicable to Federal savings associations, or, where appropriate, to all savings associations.[3]

The OCC is in the process of reviewing its rules to determine whether it is appropriate to integrate them into a single set of rules for both national banks and savings associations, taking into account consistency with the underlying statutes that apply to each type of institution. The key objectives of this review are to reduce regulatory duplication, promote fairness in supervision, eliminate unnecessary burden consistent with safety and soundness, and create efficiencies for both national banks and savings associations, as well as the OCC.[4]

As part of this review of our national bank and savings association rules, the OCC published in the **Federal Register**[5] on June 10, 2014, a proposal to integrate its rules relating to corporate activities and transactions involving national banks and Federal savings associations (licensing rules). One of the objectives of this rulemaking is to create, where possible, filing parity for all activities and transactions addressed in the OCC's licensing rules. The OCC believes that it is more equitable and efficient to have a single filing and review process for corporate activities and transactions of national banks and Federal savings associations. In addition, the OCC is in the latter stages of developing an electronic applications filing system capable of handling applications and other filings from both national banks and Federal savings associations. Accordingly, another important objective of this rulemaking is to complete the integration of our licensing rules expeditiously so that we can include these integrated rules in this new applications system.

Concurrently, the OCC also is participating in an interagency review of regulations pursuant to section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).[6] The EGRPRA requires the Federal Financial Institutions Examination Council (FFIEC) and the OCC, the FDIC, and the Board of Governors of the Federal Reserve System (Federal Reserve Board) (collectively, the Agencies) to conduct a review of all their regulations to identify outdated, unnecessary, or unduly burdensome regulations applicable to insured depository institutions. The FFIEC and the Agencies must conduct this review at least once every 10 years, and the next review must be completed by December 31, 2016. Over the next two years the OCC, FDIC and Federal Reserve Board will issue joint notices requesting comments on their rules pursuant to the EGRPRA. The EGRPRA contemplates that the Agencies will initiate appropriate rulemakings to change or eliminate outdated, unnecessary, or unduly burdensome rules, as appropriate, based on the comments received.

The Agencies published the first EGRPRA notice on June 4, 2014,[7] and requested comments on three categories

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] Title III of the Dodd-Frank Act transferred the functions of the former OTS relating to state savings associations to the Federal Deposit Insurance Corporation (FDIC). Dodd-Frank Act, section 312(b)(2)(C), 12 U.S.C. 5412(b)(2)(C). The Dodd-Frank Act also transferred to the OCC the rulemaking authority of the OTS relating to all savings associations, both state and Federal, unless rulemaking authority is provided to another agency by a specific statute. *See* Dodd-Frank Act, section 312(b)(2)(B)(i)(II), 12 U.S.C. 5412(b)(2)(B)(i)(II). On July 21, 2011, the OCC issued an interim final rule and request for comments that restated the former OTS regulations as 12 CFR parts 100 through 197, with nomenclature and other technical changes. *See* 76 FR 48950 (Aug. 9, 2011). The FDIC has identified a number of independent bases for rulemaking authority for state savings associations in some cases. Where there is no such independent rulemaking authority, the FDIC will enforce applicable OCC regulations for state savings associations.

[3] The OCC previously has issued rulemakings that integrated, or proposed to integrate, its rules for national banks and Federal savings associations relating to lending limits, capital, flood insurance, and safety and soundness standards. *See* 78 FR 37930 (June 25, 2013), 78 FR 62018 (Oct. 11, 2013), 78 FR 65108 (October 30, 2013), and 79 FR 54518 (September 11, 2014), respectively. Furthermore, the OCC has integrated its rules relating to consumer protection in insurance sales, Bank Secrecy Act compliance, management interlocks, appraisals, disclosure and reporting of Community Reinvestment Act (CRA)-related agreements, and the Fair Credit Reporting Act. *See* 79 FR 28393 (May 16, 2014).

[4] Concurrent with our integration of national bank and Federal savings association rules, the OCC also is reviewing OTS-issued supervisory policies to integrate them into the OCC's policy framework and to rescind any issuances that are duplicative, outdated, or replaced by other supervisory guidance. Our goal is to produce uniform policies for national banks and Federal savings associations, while recognizing differences that exist in statute. This policy review is occurring in conjunction with this integration rulemaking project. Many OTS-issued supervisory policies already have been integrated, rescinded, or replaced by new or existing OCC guidance. We will update this policy guidance, as appropriate, to reflect the integration of OCC rules as of the effective date of the final rules. Until that time, the Dodd-Frank Act provides that all such OTS issuances continue in effect until modified, terminated, set aside, or superseded. *See* Dodd-Frank Act section 316(b)(2) (12 U.S.C. 5414(b)(2)); OCC Bulletins 2011–47 (Dec. 11, 2011), 2012–2 (Jan. 6, 2012), 2012–3 (Jan. 6, 2012), 2012–15 (May 17, 2012), 2013–34 (Nov. 20, 2013), and 2014–49 (Oct. 1, 2014); and *www.occ.gov/publications/publications-by-type/comptrollers-handbook/index-comptrollers-handbook.html.*

[5] 79 FR 33260.

[6] 12 U.S.C. 3311.

[7] 79 FR 32172.

of rules, including the Agencies' licensing rules.[8] The licensing Notice of Proposed Rulemaking (NPRM or proposed rule) indicated that the OCC would consider comments received in response to both the EGRPRA notice and the NPRM when finalizing its licensing integration rule. We received eight comment letters on our licensing rules and our licensing proposed rule in response to our first EGRPRA notice, and this final rule reflects these comments.

As part of this EGRPRA review, the Agencies also are holding a number of outreach meetings to provide interested parties with an opportunity to comment on regulatory burden reduction in our regulations. This preamble discusses relevant comments received at outreach meetings held on December 2, 2014, in Los Angeles, Calif., and February 4, 2015 in Dallas, Texas, to the extent they relate to OCC licensing rules.

II. Overview of the Final Rule

Twelve CFR part 5 sets forth the OCC's rules, policies and procedures for national bank corporate activities and transactions. Subpart A sets forth the generally applicable rules and procedures, while subparts B through D contain the rules for national bank initial activities, the expansion of activities, and other changes in activities and operations. Subpart E addresses a national bank's payment of dividends, and subpart F addresses Federal branches and agencies. The OCC's equivalent rules, policies and procedures for Federal savings associations are dispersed throughout parts 100–199 with the generally applicable rules and procedures in part 116. This final rule revises part 5 to make it applicable to both national banks and Federal savings associations and, to the extent appropriate, deletes the corresponding provisions found in parts 100 through 199.

Specifically, the final rule consolidates most licensing provisions for Federal savings associations into the existing national bank rule in part 5 and eliminates parts 116, 146, 152, 159, 174 and the corresponding provision in parts 143, 144, 145, 150, 160, and 163. These combined rules are as follows:

- Rules of general applicability (subpart A)
- Organizing a national bank or Federal savings association (§ 5.20)
- Conversion from a national bank or Federal savings association to a state bank or state savings association (§ 5.25)
- Fiduciary powers of national banks or Federal savings associations (§ 5.26)
- Business combinations involving a national bank or Federal savings association (§ 5.33)
- Bank service company investments of a national bank or Federal savings association (§ 5.35)
- Investment in national bank or Federal savings association premises (§ 5.37)
- Change in location of a main office of a national bank or home office of a Federal savings association (§ 5.40)
- Corporate title of a national bank or Federal savings association (§ 5.42)
- Voluntary liquidation of a national bank or Federal savings association (§ 5.48)
- Change in control of a national bank or Federal savings association; reporting of stock loans (§ 5.50)
- Changes in directors and senior executive officers of a national bank or Federal savings association (§ 5.51)
- Change of address of a national bank or Federal savings association (§ 5.52)
- Substantial asset change by a national bank or Federal savings association (§ 5.53)

In other cases, this final rule retains separate rules for national banks and Federal savings association in part 5 because the rules do not apply to both charters, are better organized as separate rules, or their differences and complexity make integration difficult. The new Federal savings association rules are as follows:

- Federal mutual savings association charters and bylaws (§ 5.21)
- Federal stock savings association charters and bylaws (§ 5.22)
- Conversion to become a Federal savings association (§ 5.23)
- Establishment, acquisition, and relocation of a branch and establishment of an agency office of a Federal savings association (§ 5.31)
- Operating subsidiaries of a Federal savings association (§ 5.38)
- Increases in permanent capital of a Federal stock savings association (§ 5.45)
- Capital distributions by a Federal savings association (§ 5.55)
- Inclusion of subordinated debt securities and mandatorily redeemable preferred stock as supplementary (tier 2) capital (§ 5.56)
- Pass-through investments by a Federal savings association (§ 5.58)
- Service corporations of Federal savings associations (§ 5.59)

The remaining rules in part 5 continue to be applicable only to national banks, with the exception of subpart E. (Subpart E applies only to Federal branches and agencies, and we did not propose to amend it in the NPRM.) We are amending some of these rules to be consistent with the changes for Federal savings associations, revising the titles of some of these rules to reflect the inclusion of rules applicable to Federal savings associations in part 5, and making other technical changes. These national bank-only rules are as follows:

- Conversion to become a national bank (§ 5.24)
- Establishment, acquisition, and relocation of a branch of a national bank (§ 5.30)
- Expedited procedures for certain reorganizations of a national bank (§ 5.32)
- Operating subsidiaries of a national bank (§ 5.34)
- Other equity investments by a national bank (§ 5.36)
- Financial subsidiaries of a national bank (§ 5.39)
- Changes in permanent capital of a national bank (§ 5.46)
- Subordinated debt issued by a national bank (§ 5.47)
- Payment of dividends by national banks (Subpart E)

In addition to the placement and integration of Federal savings association rules, the final rule makes substantive changes to the OCC's licensing rules to eliminate unnecessary requirements and to further the safe and sound operation of the institutions the OCC supervises. Furthermore, the final rule makes conforming and technical changes to the rules in parts 5, 7, and 34 and in various provisions of parts 100 through 199 to reflect the movement of the licensing rules for savings associations to part 5, to adjust section titles, and to conform cross-references. In particular, the final rule replaces, where appropriate, references to ''bank'' with ''national bank,'' because it better parallels the term ''Federal savings association.'' Finally, the rulemaking amends the OCC's licensing rules to make consistent the OCC office to which a national bank or Federal savings association must file its notice or application. Specifically, the final rule amends each rule in part 5 to direct such filings to the institution's appropriate OCC licensing office or appropriate OCC supervisory office, as applicable, and, in clarifying amendments, updates the description of the OCC's supervisory structure in part 4.

A description of amendments made by this final rule, the comments received on the proposed rule, relevant comments received in response to the June 2014 EGRPRA notice, and

[8] The OCC issued its second EGRPRA notice, requesting review of banking operations, capital, and the Community Reinvestment Act regulations, on February 13, 2015, 80 FR 7980.

licensing-related comments made at the EGRPRA outreach meetings held in Los Angeles, California and Dallas, Texas appears in the section-by-section description of the final rule set forth below in Section III of this preamble. Section IV of the preamble summarizes the significant changes for national banks and Federal savings associations resulting from this final rule. Section VI of the preamble contains a redesignation table that indicates changes in the numbering of the rules as a result of this final rule. Sections IV and VI may be used as a quick-reference guide to our rulemaking and are intended to assist national banks and Federal savings associations, especially community institutions, in understanding the changes made by this rulemaking.

III. Description of the Final Rule and Public Comments

The OCC received one comment in response to the proposed rule, and that comment referred the OCC to a comment received in connection with the June 2014 EGRPRA notice. The OCC also received 48 public comments in response to the June 2014 EGRPRA notice, seven of which addressed issues related to licensing rule integration. These comments, the provisions they address, and the resulting changes to the OCC's rules are discussed below.

A. Part 4—District Offices (§ 4.5)

Part 4 covers several areas, including regulations pertaining to the OCC's organizational structure. Section 4.4 describes the role of the OCC's Washington, DC office. Section 4.5 describes the role of the OCC's district and field offices and sets forth the address of, and the geographical area covered by, each district office. However, §§ 4.4 and 4.5 do not completely describe all of the OCC's supervisory offices. We proposed to amend 12 CFR 4.5 to reflect more accurately the current supervisory structure for national banks and Federal savings associations. Specifically, we proposed to revise § 4.5 to include a description and address of the OCC's Midsize Bank Supervision program, and to provide that the district offices supervise community banks not otherwise supervised by the Washington office or Midsize Bank Supervision. The NPRM also proposed to replace the outdated reference to ''duty stations'' with the currently used term ''field office.'' We received no public comments on the proposed § 4.5 amendments and adopt them as proposed with some technical changes. First, the final rule adds American Samoa to the list of territories in § 4.5(b)(1). It was inadvertently left out of the proposed rule. Second, the final rule replaces the term ''field office satellite offices'' with ''other supervisory offices'' in § 4.5(b)(2), and makes changes to paragraph headings.

B. Part 5—Rules, Policies, and Procedures for Corporate Activities

General Comments

A number of public commenters made general comments regarding the OCC's licensing rule integration effort. One commenter, a banking trade association, supported the OCC's efforts to integrate its licensing rules as a starting point for a more efficient and streamlined regulatory regime for both national banks and Federal savings associations. However, this commenter stated that, by including a number of new substantive requirements and amendments, this rulemaking will increase burden on the industry, and is therefore inconsistent with the stated purpose of the EGRPRA process. This commenter requested that the OCC issue a separate proposed rule for any substantive changes that create burdens greater than those imposed by existing rules.

We note that the OCC has taken several considerations into account in integrating the national bank and Federal savings association rules. As stated in the preamble to the proposal, the key objective of this rulemaking is to integrate the national bank and Federal savings association rules in a way that promotes fairness in supervision, reduces regulatory duplication, eliminates unnecessary burden consistent with safety and soundness, and creates efficiencies for both national banks and savings associations, as well as the OCC. The final rule reflects a balance of these considerations.

In addition, this commenter stated that the OCC should have conducted industry outreach in advance of proposing the integration of national bank and Federal savings association licensing rules and should create a plan for outreach and the education of institutions on the proposed changes going forward. We note that we do intend to engage in efforts to educate the industry on the final rule, including discussing these changes in meetings with bankers, trade groups, and other interested parties, as appropriate, and providing summaries of the changes on the OCC's Internet Web page, *www.occ.gov*. In addition, we note that OCC staff is available to provide assistance to institutions planning a filing under the revised rules, as needed. Furthermore, the Comptroller's Licensing Manual provides applicants with more detailed explanations of the requirements and procedures for licensing filings with the OCC. The OCC is in the process of revising the Comptroller's Licensing Manual to reflect the changes made by this final rule. We will post the individual booklets of the Manual to the OCC Web site as they are finalized.

Another trade association commenter requested that the OCC provide tiered regulation that would provide different treatment for large banks and community banks. The OCC is committed to finding ways to reduce burden on community banks without negatively affecting the safety and soundness of those institutions, including applying less burdensome regulatory requirements where permissible and appropriate. However, we note that tiered regulation based on asset-size is not always appropriate in the licensing context because many of the application requirements are mandated by statutes that do not authorize the OCC to differentiate among institutions based on size or status as a community bank.

Rules of General Applicability (Part 5, Subpart A)

Twelve CFR part 5, subpart A, and 12 CFR part 116 set forth the OCC's generally applicable rules and procedures for processing filings [9] related to corporate activities and transactions of national banks and Federal savings associations. Both sets of regulations include filing requirements and explain where and how to file. We believe that it is more efficient to have a single filing process for national banks and Federal savings associations, where possible. As proposed, this final rule amends subpart A to apply to both national banks and Federal savings associations, to make additional substantive and technical changes to subpart A, and to remove part 116 in its entirety.

Section 5.2 Rules of General Applicability. Current rules differ with respect to the scope and applicability of the generally applicable licensing procedures for national banks and Federal savings associations. The national bank rule at 12 CFR 5.2(a) states that the subpart A procedures

[9] Current rules use slightly different terminology for national banks and Federal savings associations. Under 12 CFR 5.3(i), a ''filing'' is an application or notice submitted under part 5. Twelve CFR 116.1(a) uses the word ''application'' to mean an application, notice, or filing related to a Federal savings association. In this preamble, when it is not necessary to distinguish among the three, we use the word ''filing'' to refer to an application, notice, or other filing.

apply to all part 5 filings, unless otherwise stated.[10] Section 5.2(b) states that the OCC may adopt materially different procedures if it provides notice to affected parties. In contrast, the Federal savings association rule at § 116.1 states that the part 116 prefiling and filing procedures and the rules for OCC review apply to all required filings related to Federal savings associations, but that the publication requirements and the comment and meeting procedures apply only when an OCC regulation specifically incorporates these procedures or the OCC otherwise requires. Section 116.1(b) also specifies that part 116 does not apply to filings related to transactions under sections 13(c) or (k) of the Federal Deposit Insurance Act (FDI Act);[11] certain final agency action requests; certain requests related to litigation, enforcement proceedings, or supervisory directives or agreements; or applications filed under an OCC regulation that prescribes other application processing procedures and time frames.

We proposed to apply all subpart A procedures to all part 5 OCC filings, unless the substantive rule specifically exempts the filing or the OCC states otherwise. We received no comments on this provision and adopt the procedures as proposed. This change creates more parity for national banks and Federal savings associations when filing an application for activities and transactions addressed in part 5.

Section 5.2(c) also states that the Comptroller's Licensing Manual provides additional filing information and is available on-line and, for a fee, in print. We proposed to revise this provision to state only that the Manual is available on-line. This proposed revision reflected the OCC's decision to stop printing the Manual in hard copy, to reduce paper consumption and to ensure that the public receives only the most up-to-date information. The OCC also is in the process of updating the Manual, as well as filing forms, to contain information on both national bank and Federal savings association filings. As indicated earlier in this preamble discussion, we are updating our electronic filing system so that a single system will receive filings from both national banks and Federal savings associations.

Additionally, § 5.2(d) states that the OCC may permit electronic filing for any class of filings. In order to reflect the agency's move toward the more efficient and less costly electronic filings, we proposed to revise this provision to state that the OCC encourages all filings to be made electronically. We received one comment on the § 5.2 filing procedures, which requested that the OCC make electronic submission available for all forms and reporting requirements. Currently, certain OCC licensing forms can be filled and submitted electronically, *e.g.,* branch establishment. Furthermore, the modifications the OCC is currently making to its electronic filing system, as discussed above, will permit national banks and Federal savings associations to submit all filings electronically. No changes are needed to our proposed rule to incorporate this comment, and we therefore adopt § 5.2(d) as proposed.

Section 5.3 Definitions. Section 5.3 contains definitions of terms used throughout part 5. We proposed to amend many of these definitions so that they would apply to both national bank and Federal savings association filings in part 5. For example, we proposed to amend the definition of ''capital and surplus'' to include reference to Federal savings associations.[12]

The OCC also proposed to amend the definition of ''eligible bank'' in § 5.3(g) to add the term ''eligible savings associations.'' Currently, an ''eligible bank'' is a national bank that (1) is well capitalized under the OCC's Prompt Corrective Action (PCA) regulations, (2) has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS), (3) has an ''Outstanding'' or ''Satisfactory'' Community Reinvestment Act (CRA) rating, and (4) is not subject to a cease and desist order, consent order, formal written agreement, or PCA directive, or, if it is, the OCC has informed the bank that it may nonetheless be treated as an ''eligible bank.'' Under certain rules in part 5, an eligible bank may receive expedited review of a filing in the manner set out in the rule. Section 5.13(a)(2) sets out additional information about the expedited review process.

Part 116 also has an expedited review process for certain filings. Specifically, § 116.5 provides that a Federal savings association filing will receive expedited treatment unless: (1) It has a composite or compliance rating below 2 or a CRA rating of ''Needs to Improve'' or ''Substantial Noncompliance,'' (2) it fails any part 3 capital requirement, as applicable, and has been notified that it is in troubled condition,[13] (3) it does not have a composite, compliance, or CRA rating, or (4) the applicable regulation does not specifically state that expedited treatment is available.

We proposed to amend § 5.3(g) by defining ''eligible bank or eligible savings association'' (instead of ''eligible bank'') and by adding an OCC compliance rating of 1 or 2 to the eligibility requirements for all institutions. As indicated in the preamble to the proposed rule, the OCC believes that a bank's compliance with consumer-related statutes and regulations should be a factor in determining whether a bank may qualify for expedited treatment. In addition, we note that, because a Federal savings association's compliance rating is included in part 116 as one of the criteria for expedited review, the addition of this rating to § 5.3(g) is a change for national banks, but not for Federal savings associations. However, as explained in greater detail below, because § 5.13(a)(2)(i) permits the OCC to remove a filing from expedited review if it raises certain issues, including compliance concerns,[14] this is not a significant change for national banks. We are making one technical clarification to this provision, however. We are replacing the reference to OCC compliance rating with consumer compliance rating under the Uniform Interagency Consumer Compliance Rating System, which is the more accurate name for this rating.

Also, the proposal clarified that the CRA rating component of ''eligible bank or eligible savings association'' applies only if the CRA is applicable to the institution. We proposed this change because some limited purpose banks, such as trust banks, are not subject to the CRA.

We received one comment on proposed § 5.3(g). This commenter stated that adding a compliance rating as part of the eligibility requirement is redundant because it is already included in the CAMELS composite rating. However, while compliance is a factor in the management component of the CAMELS rating, the compliance rating referred to by the commenter, and in our proposed rule, is a separate assessment from the CAMELS rating,

[10] Certain substantive activity or transaction rules in part 5 specify that one or more of the procedures in subpart A do not apply. In some cases, the rule specifies other procedures.

[11] 12 U.S.C. 1823(c) and (k).

[12] We note that the OCC issued a final rule on October 11, 2013 that, among other things, integrates the OCC's national bank and Federal savings association capital rules. *See* 78 FR 62018. The OCC issued an interim final rule on Feb. 28, 2014, that amends the OCC's rules, including part 5, to reflect this integration. 79 FR 11300.

[13] ''Troubled condition'' for this purpose is currently defined at 12 CFR 163.555.

[14] In addition, § 5.2(b) provides the OCC with the authority to make exceptions for particular filings, where appropriate.

with different objectives and assessment factors. This commenter also stated that adding a compliance rating component to the expedited review process would create no greater certainty for national banks regarding eligibility for expedited review because the OCC would still have the discretion to remove filings from expedited review. The OCC disagrees. As indicated above, the OCC may remove a filing from expedited review if it raises compliance concerns. Because banks would know prior to applying for expedited processing whether or not their consumer compliance rating would prevent them from qualifying for such treatment, we believe that this change would provide more certainty regarding a bank's eligibility for expedited review before it begins that process.

For these reasons, the OCC is adopting the amendment to § 5.3(g) as proposed, with the technical clarification to the name of the compliance rating, discussed above.

We note that, with respect to Federal savings associations, there may be changes for some filings because the criteria in §§ 5.3 and 116.5 are not identical. Under the current rules, the two standards are similar in that they both require a composite CAMELS rating of 1 or 2 and a CRA rating of outstanding or satisfactory. In addition, if an institution has not received a rating, it is not eligible for expedited treatment under either set of current rules and would remain ineligible under the final rule. However, under the current savings association rule both well and adequately capitalized institutions are eligible for expedited treatment. Under the final rule, only savings associations that are well capitalized qualify for expedited review. We proposed to apply the well capitalized requirement to savings associations because, in the OCC's experience, national banks and Federal savings associations that are less than well capitalized are more likely than other institutions to present supervisory concerns and, therefore, expedited review is not necessarily appropriate. As a result, some savings associations that qualify for expedited treatment under the current rule may no longer qualify for such treatment under the final rule.

A second difference involves the supervisory condition of the savings association. Under the current savings association rule, the OCC must not have notified the institution that it is in a troubled condition while, under the new rule, an eligible savings association must not be subject to certain orders, agreements or directives. Although these standards are slightly different, we expect the outcomes generally will be similar and we will monitor for significant disparities.

The OCC also proposed to amend the definition of ''eligible depository institution'' to address the fact that either a national bank or a Federal savings association may enter into a transaction with an eligible depository institution. We received no comments on this provision and adopt it as proposed.

We also proposed to change the § 5.3 definition of ''notice.'' Section 5.3(j) defines a notice as a submission informing the OCC that a national bank intends to engage in or has commenced certain corporate activities or transactions. Under § 5.3, an ''application'' is a submission requesting prior OCC approval to engage in various corporate activities and transactions. The two definitions suggest that a ''notice'' does not require OCC approval. However, the rules use the term ''notice'' in several different ways. In some rules, a ''notice'' is the same as an application in that the filer must obtain prior OCC approval before engaging in the activity or transaction. In other rules, a ''notice'' is similar to an application in that, while the OCC does not ''approve'' the filing, the OCC may disapprove it. In still other rules, the notice only informs the OCC that the filer intends to engage in or has engaged in a transaction. The OCC may review the notice, but there is no requirement of prior OCC approval. Some of the latter notices can be filed after-the-fact. We proposed to add language to § 5.3(j) stating that the specific meaning of *notice* depends on the context of the rule in which it is used and may require the filer to obtain prior OCC approval before engaging in the activity or transaction, may provide the OCC with authority to disapprove the notice, or may be informational requiring no official OCC action. We also proposed to add Federal savings associations to § 5.3(j). We received no comments on this provision and adopt it as proposed.

The OCC also proposed to strike the § 5.3 definition of ''appropriate district office'' and, instead, to define ''appropriate OCC licensing office'' as described at *www.occ.gov* and ''appropriate OCC supervisory office'' as described in subpart A of 12 CFR part 4. We proposed this change to eliminate confusion caused by the current definition with respect to where a filing should be made. The proposal included conforming changes throughout part 5. We received no comments on these proposed changes, and we adopt the amendments as proposed.

The OCC also proposed to change the definition of ''short-distance relocation,'' a term that is used in current national bank branch and main office relocations regulations,[15] to reference both national bank main office relocations and Federal savings association home office relocations, consistent with the changes proposed in 12 CFR 5.40 and discussed elsewhere in this rulemaking.[16]

The current ''short-distance relocation'' definition in the banking rule also references whether a branch is located within a ''central city of a MSA (metropolitan statistical area).'' The Office of Management and Budget (OMB), which designates MSAs, uses the term ''principal city'' in describing MSAs.[17] The current Federal savings association regulation also uses the term ''principal city.'' We proposed to amend the rule for national banks to use the term ''principal city,'' to conform with the MSA terminology used by OMB. We received no comments on these proposed changes and adopt the amendments as proposed.

§ 5.4 Filing required. Section 5.4(a) directs a depository institution to file an application or notice with the OCC to engage in national bank activities and transactions described in part 5. As a result of the other changes made by this final rule to part 5, this directive also applies to Federal savings associations with respect to part 5 transactions and activities. No change is needed to the regulatory language in § 5.4 to achieve this result.

We received one comment letter on the general requirement to file a notice or application. This commenter advocated that institutions that are well capitalized and well managed generally should be exempt from prior notice or approval requirements, as in the FRB's Regulation Y (12 CFR 225.4(b)(1)) for purchases and redemptions of holding company stock for well-capitalized holding companies that meet certain requirements. The OCC disagrees with this comment. In many cases, we are required to consider approval standards under the relevant statute, and in these cases and in others, the review process serves a significant supervisory purpose. Furthermore, as described below, our licensing rules provide expedited processing for certain highly rated

[15] *See* 12 CFR 5.30(h)(2) and 12 CFR 5.40(d)(5)(ii), respectively.

[16] As explained in the discussion of the changes to 12 CFR 5.40, the Federal savings association home office is the equivalent of a national bank main office.

[17] *See, e.g., www.ffiec.gov/Geocode/help1.aspx* (referencing MSAs and principal cities).

institutions for many filings. We therefore decline to make this change.

Section 5.4(b) states that forms and instructions for filings are available in the Comptroller's Licensing Manual or from an OCC district office. We proposed to revise this section because the Manual is now only available on-line. As noted above, the OCC will be updating this Manual, and it will contain information on both national bank and Federal savings association filings.

Section 5.4(c) states that, at a filer's request, the OCC may accept another agency's form or filing if it contains substantially the same information required by the OCC. Section 116.25(c), which allows the OCC to waive certain filing requirements, has been used for this same purpose with respect to Federal savings association filings. Under the final rule, this option remains available for both national banks and Federal savings associations.

Section 5.4(d) directs a filer to submit a filing or other submission to the OCC's Director for District Licensing at the appropriate district office, unless directed otherwise in a prefiling communication. For Federal savings associations, § 116.40(a) directs filings to the Director for District Licensing at the appropriate OCC licensing office or the OCC licensing office at OCC headquarters. In addition, under § 116.40(b), if a filing involves significant issues of law or policy, or if the applicable regulation or form so directs, the applicant must also file copies at the OCC headquarters licensing office.

We proposed to change § 5.4(d) to direct that applicants address part 5 filings and related submissions to the appropriate OCC licensing or appropriate OCC supervisory office (unless the OCC advises otherwise through a prefiling communication) and to state that the relevant addresses are on the OCC's Internet Web page, *www.occ.gov*.

Furthermore, the OCC's current rules do not specify how many copies an applicant must file with the OCC. This information generally is stated on the form itself or in the Comptroller's Licensing Manual. In contrast, § 116.40(a) states that Federal savings association filers must submit to the appropriate licensing office or the OCC licensing office at headquarters the original form plus the number of copies specified on the application. If the number of copies is not specified there, § 116.40(a) directs applicants to submit the original plus two copies. We proposed to remove this requirement from the regulation for Federal savings associations and, instead, direct Federal savings association filers to consult the appropriate form and the Comptroller's Licensing Manual for information on the number of required copies.

Section 5.4(e) permits an applicant to incorporate by reference information contained in another OCC application or filing, provided that the material (1) is attached to the application, (2) is current, and (3) is responsive to the requested information. The filing must clearly indicate that the information is incorporated and include a cross-reference to the incorporated information. With respect to Federal savings association filings, § 116.25(c), which allows the OCC to waive certain filing requirements, is currently used to allow incorporation by reference. Moreover, the Federal savings association filing forms themselves typically provide for incorporating by reference other documents. We proposed to apply § 5.4(e) to all filings with the OCC, without any change to the regulatory language and with no material change to affected institutions or persons.

Finally, § 116.15(b)(2) encourages all applicants to contact the appropriate OCC licensing office to determine whether the applicant must attend a prefiling meeting or whether the submission of a draft business plan or other information would expedite the application review process. Section 116.20 describes the required contents of a draft business plan.[18] In contrast, part 5, subpart A does not include rules on prefiling meetings, although other rules in part 5 may address these meetings,[19] and the OCC may request such a meeting on a case-by-case basis under § 5.2(b). Subpart A also does not address the submission of business plans to the OCC.

The OCC has found that prefiling meetings, as well as the submission of business plans or other information before such meetings, often result in a more efficient review process. Accordingly, we proposed to revise subpart A by adding a new § 5.4(f) that encourages application filers to contact the OCC to determine the need for a prefiling meeting, regardless of whether a prefiling meeting is specifically required by another regulation. This new provision also states that the OCC will decide on a case-by-case basis whether a meeting is necessary and that the prior submission of a draft business plan or other relevant information may expedite the process. Unlike part 116, however, the new provision does not specify the information to include in a draft business plan because that level of detail is better handled in the Comptroller's Licensing Manual.

We received no specific public comments on these proposed changes to § 5.4. However, one commenter at the Los Angeles EGRPRA outreach meeting advocated the use of prefiling meetings for both the agency and the organizers. We are adopting the amendments as proposed.

Section 5.5 Filing fees. Section 5.5 states that an applicant shall submit filing fees in the form of a check made payable to the OCC. The rule also states that the OCC publishes a fee schedule annually and does not generally refund filing fees. Section 116.45(a)(3) addresses the payment of Federal savings association filings fees, directing applicants to submit fees to the appropriate OCC licensing office and permitting applicants to pay fees by check, money order, cashier's check, or wire transfer.

We proposed to apply § 5.5 to all fees paid to the OCC and to revise § 5.5 to state that fees may be paid by check, money order, cashier's check, or wire transfer. This statement is consistent with both the current Federal savings association rule and the OCC's ability to accept these forms of payment from all filers. The proposed section also states that additional filing fee information, including where to submit the fee, can be found in the Comptroller's Licensing Manual. Finally, as a technical amendment, we proposed to remove the word ''annually'' from the § 5.5 description of when the OCC publishes a fee schedule, to clarify that, as stated in 12 CFR 8.8, the OCC may publish an interim or amended filing fee schedule, in addition to its annual publication.

We received no public comments on the proposed § 5.5 amendments and adopt these amendments as proposed.

Section 5.7 Investigations. Section 5.7 states that the OCC may examine or investigate and evaluate facts related to a filing to the extent necessary to reach an informed decision. Section 116.230 has a narrower scope and time frame, providing that the OCC may conduct an eligibility examination at any time before it deems an application complete. We proposed to apply § 5.7 to all filings received by the OCC, including those related to Federal savings associations, because the OCC believes that the more flexible approach in § 5.7 is preferable.

[18] Certain Federal savings association activity and transaction rules also address these meetings. *See, e.g.,* 12 CFR 116.15(a)(1) (discussing prefiling meetings when organizing a Federal savings association).

[19] *See, e.g.,* 12 CFR 5.20(i) (discussing prefiling meetings when organizing a national bank); and 12 CFR 5.24(d)(2) (discussing prefiling meetings when converting to a national bank).

Section 5.7 also states that, as described in 12 CFR 8.6, the OCC has the authority to assess fees for special examinations and investigations. Section 8.6 is currently applicable to both national banks and Federal savings associations and related filings, as a result of the July 21, 2011 final rule,[20] discussed above. As a result, the application of § 5.7 to Federal savings association filings is a technical change only.

We received no public comments on the proposed § 5.7 amendments, and adopt them as proposed.

Section 5.8 Public notice. Under § 5.8(a), on the date of filing or as soon as practicable before or after filing, a national bank applicant shall publish a public notice in a general circulation newspaper in the community in which the applicant proposes to engage in business. The rules do not specify the language in which the applicant must publish the notice.

Under § 116.60, a Federal savings association applicant must publish notice no earlier than seven days before, and no later than the date of, the filing. Under § 116.80, the applicant must publish this notice in an English-language newspaper unless the OCC determines that the primary language of a significant number of adult residents of the community is not English, in which case the agency may require the applicant to publish simultaneously one or more additional notices in the appropriate language or languages.

We proposed to apply § 5.8(a) to all applicants, and we are adopting the amendments as proposed. As a result, Federal savings associations are no longer required to publish a public notice within the seven days before the filing date but may publish as soon as practicable before or after filing, unless otherwise required.[21] This change provides Federal savings association filers with the same flexibility that national bank filers have on when to publish a public notice while still providing the public with timely notice.

In addition, final § 5.8(a) includes the requirement from § 116.80 to publish notices in English and, if the OCC determines it is necessary, also in other languages. This change further ensures that interested persons have meaningful access to the § 5.8(a) notice.

Section 5.8(b) now states that a public notice must include: (1) A statement that a filing is being made, (2) the date of the filing, (3) the applicant's name, (4) the subject matter of the filing, (5) a statement that the public may submit comments to the OCC and where such comments should be sent, (6) the comment period closing date, and (7) any other information that the OCC requires. Section 116.55 requires similar, but not identical, information to be included in a public notice.

The OCC proposed to revise § 5.8(b) to include Federal savings associations and to add some requirements to the notice included in § 116.55. We did not receive any comments on these proposed changes and are adopting the amendments as proposed. As a result, in addition to what § 5.8(b) currently requires, a public notice related to a national bank filing must also include: (1) The name of the institution that is the subject of the filing, (2) a statement that the public portion of the filing is available on request, and (3) the address of the applicant. The public notice also must state that the public may submit comments to the appropriate OCC licensing office and provide the address of this office. A public notice related to a Federal savings association filing, in addition to the information currently required under § 116.55, also must include a specific statement that a filing is being made and the date of the filing. The OCC believes that new § 5.8(b) will provide the public with the full range of helpful information and will treat all part 5 filings consistently, while adding little additional burden for filers. We also are adopting other proposed minor technical changes to § 5.8(b).

Section 5.8(c) currently requires a filer to confirm that the § 5.8(a) notice has been published by delivering to the OCC a statement of the date of publication, the name and address of the paper in which notice was published, and a copy of the notice. Federal savings association filers are required to do the same, although this requirement is set forth on the application itself and not included in the regulatory text. The OCC is adopting the proposal to apply § 5.8(c) to both national bank and Federal savings association filings pursuant to part 5.

Section 5.8(d) currently states that the OCC may consider more than one transaction, or a series of transactions, to be a single filing for purposes of the publication requirements of this section. When filing a single public notice for multiple transactions, the filer shall explain in the notice how the transactions are related. Although this is not specifically permitted under part 116, it has been an accepted practice for Federal savings association filings. No changes to § 5.8(d) are necessary for it to apply to a Federal savings association filing. Under this rulemaking, both national banks and Federal savings associations may continue to engage in this practice, which eliminates unnecessary publications while ensuring that the public's need for notice is met.

Section 5.8(f) allows the OCC to require or give public notice and request comment on any filing and in any manner that it determines is appropriate for a particular filing. There is no equivalent provision in part 116. The OCC is adopting the proposal to apply this provision to both national banks and Federal savings associations.

In addition, § 116.240(b) provides that, prior to the end of the applicable review period, if the OCC determines that an issue of law or change in circumstances has arisen that will substantially affect an application, it may require an applicant to publish, among other things, a new public notice. Although no specific national bank rule provides for this result, the OCC has a similar practice for national bank filings. In order to codify and clarify this practice, the OCC proposed to add a new § 5.8(g) that states that the OCC, at its discretion, may require an applicant to publish a new public notice if: (1) The applicant submits either a revised filing or new or additional information related to a filing, (2) there is a major issue of law or a change in circumstances that arises after a filing, or (3) the agency determines that a new public notice is appropriate. This provision does not represent a material change for either national bank or Federal savings association filers. The OCC did not receive any comments on this change, and we are adopting the amendment as proposed.

Section 5.9 Public availability. Section 5.9 addresses access to the public portion of a filing and the confidential treatment that may be provided to certain information in a filing. Specifically, § 5.9(a) states that the OCC will provide a copy of the public portion of a pending filing in response to a written request made to the appropriate district office. A person may submit a written request to the OCC's Communication's Division for a copy of the public portion of a decided or closed application. In either case, the OCC may impose a fee for the copy. Section 5.9(b) explains that a public file consists of the portions of the filing, supporting data, supplementary information, and information submitted by interested persons to the extent that these items have not been afforded confidential treatment.

[20] 76 FR 43549.

[21] Certain activities and transactions are exempt from the § 5.8 notice requirements and subject to other notice requirements. *See, e.g.,* 12 CFR 5.50(g) (notice of change in bank control).

Section 5.9(c) addresses the confidential treatment of information included in a filing, explaining both that an applicant and an interested person submitting information may request that specific information be treated as confidential under the Freedom of Information Act (FOIA) [22] and how to make this request. The provision also states that if the OCC does not consider the information to be confidential, the agency may include that information in the public portion of a filing after providing notice to the submitter. In addition, it permits the OCC to determine, on its own initiative, that certain information should be treated as confidential and to withhold that information from the public file.

Section 116.35 addresses the public and confidential aspects of a Federal savings association filing. Paragraph (a) states that the OCC generally makes part 116 submissions available to the public but may keep portions confidential. Section 116.35(b) provides that an applicant may request confidential treatment of certain portions of a filing and explains how to make this request. It also states that the OCC will not treat as confidential the portion of a filing that describes how an applicant plans to meet its CRA objectives and notes that the agency will advise an applicant before it makes information designated as confidential available to the public.

We proposed to apply § 5.9 to all filings made pursuant to part 5, as revised. We received no public comments on the proposed § 5.9 amendments, and are adopting them as proposed. This revision is not intended to result in material changes for either national bank or Federal savings association filings. Although § 5.9 does not explicitly address the OCC's treatment of filing information regarding how a filer plans to meet its CRA objectives, the OCC does not treat this information as confidential.

We are also adopting other minor proposed changes to § 5.9(a) and (c), including to which OCC office a request to obtain the public portion of a decided or closed application or to withhold information from a public file should be submitted.

Section 5.10 Comments. Section 5.10(a) provides that any person may submit a comment to the appropriate district office during the comment period. Section 5.10(b)(1) provides that, unless otherwise stated, the comment period runs for 30 days after publication of the § 5.8(a) public notice. Under § 5.10(b)(2), the OCC may extend the comment period if an applicant either fails to file all required publicly available information in a timely manner or makes a request for confidential treatment that is not granted by the OCC and that delays the public availability of information. The comment period also may be extended to develop factual information needed to consider the application or if the OCC determines that other extenuating circumstances exist. In addition, the rule provides that the OCC may give an applicant an opportunity to respond to comments received during the comment period.

The Federal savings association rules are much more detailed, particularly with respect to application comments. Section 116.110 provides that any person may comment on a filing and § 116.120(a) states that a comment should include all relevant facts supporting the commenter's position. It further provides that a comment should address at least one reason why the OCC may deny the application under relevant law, recite facts and data supporting these reasons, and discuss how the approval could harm the commenter or any community. Under § 116.120(b), any request for a meeting must be included with the comment. Section 116.130 states that a commenter must file with the appropriate OCC licensing office and simultaneously must provide a copy of any written comment to the applicant. Under § 116.140, a commenter must file a comment within 30 days after publication of the initial public notice and further states that the OCC may consider later filed comments if the comment will assist in the disposition of the application.

The OCC has found that the less detailed and prescriptive approach in the current part 5 rules works well for both filers and the public and proposed to apply § 5.10 to all filings received by the OCC, with one clarification. We received no public comments on the proposed § 5.10 amendments and are adopting them as proposed. Therefore, the final rule will result in two changes with respect to Federal savings association filings. First, the amended rule does not specify what information to include in a comment. Second, a commenter on a Federal savings association filing will not be required to provide a copy of the comment to the Federal savings association, although the commenter may still do so if preferred. Instead, the Federal savings association will obtain a copy of the public portion of any comment from the OCC. The rule clarifies that comments relating to either a national bank or a Federal savings association should be submitted to the appropriate OCC licensing office. This is consistent with the current Federal savings association rule.

The OCC also is adopting other proposed changes to § 5.10 that affect both national banks and Federal savings associations. First, as revised, § 5.10(b)(1) provides that the OCC may require a new comment period of up to 30 days if a new public notice is required under proposed § 5.8(g). This change is necessary to provide interested parties with an opportunity to comment when a new notice is published, which, as explained in the discussion of proposed § 5.8(g), may be required in certain circumstances. Finally, the OCC is adopting a minor change to § 5.10(b)(2) to clarify that the OCC can extend any comment period, either an original or a new comment period. We did not receive any comments on these provisions.

Section 5.11 Hearings and other meetings. Pursuant to § 5.11(a), any person can request a hearing on a filing by submitting to the appropriate district office a description of the issues or facts to be presented and explaining why a written submission is not adequate. The requestor must simultaneously provide the request to the applicant. As noted above, under § 116.120(b), the person must include a request for a hearing (referred to as a meeting in this section) in the comment and explain why written submissions are insufficient. Also under § 116.130, the person must file the comment, including the meeting request with the appropriate OCC licensing office, with a copy to the applicant.

We proposed to apply § 5.11(a) to all OCC hearing requests with respect to both national banks and Federal savings associations. As with the other proposed changes to § 5.11, the OCC did not receive any comments related to § 5.11(a) and we are adopting it as proposed, with one technical change. As a result, pursuant to the new § 5.11(a), a person seeking a hearing on a filing pertaining to a Federal savings association will no longer be required to request a hearing as part of a comment submission, and a hearing request would be submitted to the appropriate OCC office. This revision provides added flexibility to those requesting hearings related to Federal savings association filings.

Section 5.11(b) states that the OCC may grant or deny a hearing request, limit the issues to those it deems relevant or material, and order a hearing in the public's interest. Under § 5.11(c), if the OCC denies a hearing request, the agency will notify the requestor of the

[22] 5 U.S.C. 552.

reason for the denial. Sections 116.170(a) and (b) are substantively the same as § 5.11(b) and (c). The OCC is adopting the proposal to apply § 5.11(b) and (c) to all hearings with no substantive change for affected parties.

Section 5.11(d) describes the OCC's pre-hearing procedures. Specifically, under § 5.11(d)(1), if the OCC decides to hold a hearing, it sends a Notice of Hearing to the applicant, the person requesting the hearing, and anyone else who requests a copy. The Notice states the subject and date of the filing, the time and place of the hearing, and the issues to be addressed at the hearing. Section 5.11(d)(2) states that the OCC appoints a presiding officer to conduct a hearing.

There are no equivalent provisions in the Federal savings association regulations. Instead, § 116.170(a) states that the OCC may either grant a meeting request or hold one on its own initiative, and it may limit the issues considered at a meeting to those it deems relevant or material. The OCC is adopting the proposal to apply § 5.11(d)(1) to all part 5 OCC hearings so that all interested parties are notified of an upcoming hearing when it is scheduled. As proposed, the rule would have amended § 5.11(d)(1) to state that the OCC may limit the issues considered at a hearing to those it determines are relevant or material. We are removing this statement in § 5.11(d)(1) in the final rule because it is duplicative of the language in § 5.11(b), and therefore unnecessary.

Section 5.11(e) states that a person who wishes to appear at a hearing shall notify the appropriate district office within 10 days after the OCC issues a Notice of Hearing. It also requires, at least five days before the hearing, that each participant submit the names of witnesses and one copy of each exhibit to be presented, to the OCC, the applicant, and any other person the OCC requires. There are no equivalent rules for Federal savings associations. The OCC is adopting the proposal to apply § 5.11(e) to all persons who wish to appear at an OCC hearing. Section 5.11(e) allows the OCC and other persons to prepare for a hearing and results in a more efficient and productive hearing.

Section 5.11(f) states that the OCC arranges for a hearing transcript and states that the person requesting a hearing generally bears the cost of one copy of the transcript. There is no equivalent part 116 provision. The OCC is adopting the proposal to apply this provision to all OCC hearings and also to replace the ''generally bears'' phrase with ''may be required to bear.'' This change reflects the fact that the OCC generally has not passed this cost onto a person who requests a hearing but may find it appropriate to do so in certain cases. Although this is a technical change with respect to national bank filers, a person requesting a hearing on a filing pertaining to a Federal savings association should be aware that, under the amended rule, a hearing transcript will be prepared and that the person may be required to pay its cost.

Section 5.11(g) explains how a part 5 hearing is conducted, providing generally that the applicant and participants may make opening statements and present witnesses, material, and data. It also requires a copy of any documentary material to be provided to the OCC, the applicant, and each participant. In contrast, the § 116.180 procedures for Federal savings association hearings provide that the OCC may conduct a meeting in any format, including telephone conferences, face-to-face meetings, or formal meetings. In addition, both §§ 5.11(g) and 116.180 provide that the Administrative Procedure Act, the Federal Rules of Evidence, the Federal Rules of Civil Procedure, and the OCC's relevant rules of practice and procedure (12 CFR part 19 and part 109, respectively) do not apply to these hearings. The OCC is adopting the proposal to apply § 5.11(g) to all subpart A hearings.

Under § 5.11(h), at an applicant's or participant's request, the OCC may keep the hearing record open for up to 14 days following its receipt of the hearing transcript. The agency resumes processing the filing after the record closes. Section 116.190 states that if the OCC conducts a meeting, it may suspend the applicable filing time frames. If suspended, the time period will resume when the OCC determines that the record has been sufficiently developed to support a determination on the issue(s) considered at the meeting.

The proposal would apply § 5.11(h) to all filings on which a hearing is held. The OCC is adopting this provision in the final rule unchanged, and as a result, all applicants, commenters, and other interested persons should be aware that the hearing record may be kept open for up to 14 days following receipt of the transcript, after which the OCC will resume processing the filing. The OCC believes that the public and affected parties benefit from knowing how long the record will remain open following a hearing.

Finally, § 5.11(i) addresses meetings other than hearings that the OCC may hold in connection with an application. Section 5.11(i)(1) states that the OCC may hold a public meeting either in response to a written request received during the comment period or on its own initiative. These public meetings are arranged and overseen by a presiding officer. Alternatively, under § 5.11(i)(2), the OCC may arrange a private meeting with an applicant or other interested parties to clarify, narrow, and resolve the issues. As noted above, § 116.180 states that the OCC may conduct meetings related to Federal savings association filings in any format.

As proposed, the OCC is adding paragraph (i)(3) to § 5.11, stating that the OCC may limit the issues considered at a meeting to those it determines to be relevant or material. This provision is substantively the same as the provision added to § 5.11(d) (regarding hearings) and permits the agency to ensure that meetings are meaningful and efficient. The OCC also is adopting minor, clarifying changes to § 5.11(i).

The final rule adds a new paragraph § 5.11(i)(4) that states that the OCC may conduct a meeting in any format that it determines is appropriate, including a telephone conference, a face-to-face meeting, or a more formal meeting. This new provision, which mirrors § 116.180(a), does not change what is permissible for the OCC, but rather highlights the options available to the agency. The proposed rule included this provision in § 5.11(g)(4). However, as the subject matter of paragraph (g) is hearings, this provision more appropriately belongs in paragraph (i), which contains the rules for meetings.

Section 116.185 states that the OCC will not approve or deny an application at a meeting. Although no similar language is included in either current or revised § 5.11, it is the OCC's practice not to decide on applications at hearings or other meetings. While hearings and meetings provide an opportunity for interested persons to share information with the OCC, the OCC considers information obtained at a hearing together with other materials and information pertaining to the application before rendering a decision. Decisions on filings are discussed in greater detail below.

In addition, § 116.190 provides that the OCC may suspend the application processing time frames if it decides to conduct a meeting. Although the part 5, subpart A rules do not state this directly, § 5.10(b)(2) allows the OCC to extend a comment period when necessary, § 5.11(h) allows the OCC to keep a hearing record open for 14 days after a hearing and resume processing the filing only when the record closes,

and revised § 5.13(a)(2) allows the OCC to extend the expedited review period in certain circumstances or remove a filing from expedited review when necessary. These provisions provide the OCC with the tools it needs to adjust the processing time frames when appropriate, while balancing the need for interested persons to have a predictable set of procedures on which to rely.

Section 5.12 Computation of time. The OCC computes the relevant time periods related to a national bank filing by including the day of the act or event (*e.g.,* the date an application is received by the OCC) and the last day of a time period even if it is a Saturday, Sunday, or legal holiday. Under § 116.10, for a Federal savings association filing, the OCC does not include the day of the act or the event that commences the time period. When the last day is a Saturday, Sunday or Federal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday or Federal holiday.

A single set of time computation rules for OCC filings would promote efficiency. Accordingly, we proposed to change § 5.12 to mirror the current Federal savings association rule. We received one comment in support of this change, and we are adopting the amendment as proposed. We also note that revised § 5.12 replaces ''legal holiday'' with ''Federal holiday,'' consistent with the current Federal savings association rule, to eliminate confusion when a legal state holiday is not also a Federal holiday.

Section 5.13 Decisions. Under § 5.13(a), the OCC may approve or deny a national bank filing based on the OCC's review and consideration of the record, including the activities, resources, or condition of a filer's affiliate to the extent relevant. Under § 5.13(a)(1), the OCC may impose conditions on an approval, including to address significant supervisory, CRA (if applicable), or compliance concerns.

Section 5.13(a)(2) explains the OCC expedited review process for filings concerning ''eligible'' banks, as defined in § 5.3. Specifically, these filings are deemed approved a certain number of days after the filing date or the close of the public comment period (or extension of the comment period under § 5.10), unless, prior to this date, the OCC notifies the filer otherwise. The number of days after which a particular filing is deemed approved varies depending on the activity or transaction at issue and is set out in the substantive part 5 rule for that particular activity or transaction.[23]

Under § 5.13(a)(2)(i), the OCC may extend the expedited review period for filings subject to the CRA up to 10 days if the OCC receives comments containing certain assertions about the bank's CRA performance. Section 5.13(a)(2)(ii) states that the OCC will remove a filing from expedited review if a filing or a comment raises a significant supervisory, CRA (if applicable), compliance, legal, or policy concern or issue. The OCC will provide a written explanation if this removal occurs. Section 5.13(a)(2)(iii) also states that not all adverse comments cause the OCC to extend the expedited review period or remove a filing from expedited review.

Finally, § 5.13(a)(2)(iv) provides that if approval of a filing is contingent on the approval of another filing, or if multiple requests for approval are combined in a single application, none of the filings is deemed approved unless all of the applications are subject to expedited review procedures and the longest time period expires without the OCC issuing a decision or notifying the bank that the filings are not eligible for expedited review.

Filings that are not eligible for, or do not receive, expedited review are considered under the standard review process. The process and timeframes associated with the standard review process vary depending on the nature and circumstances of a filing and are set forth in the applicable rule.

Under § 5.13(b), the OCC may deny a filing if a significant supervisory, CRA (if applicable), compliance, legal, or policy concern exists or if an applicant fails to provide the OCC with information that it requests. Pursuant to § 5.13(c), a filing must contain the information required in the applicable part 5 rule, as well as any information the OCC may require. Section 5.13(c) further provides that the OCC may deem a filing abandoned if information that is required or requested is not provided within a specified time period and may return a filing it finds to be materially deficient.

Section 5.13(d) provides that the OCC will notify a filer and other interested party (or parties) of the final disposition of a filing, including a notification confirming expedited review. If a filing is denied, the OCC will explain the reasons for the denial. Under § 5.13(e), the OCC will make a decision public if it represents new or changed policy or issues of general interest. In rendering decisions, the OCC also may elect not to disclose information that it deems to be private or confidential.

Section 5.13(f) provides that a filer can appeal a decision by writing to the Deputy Comptroller for Licensing or the OCC Ombudsman (or, in some cases, to the Chief Counsel). Section § 5.13(g) provides that when the OCC approves or conditionally approves a filing, the agency generally gives the filer a specified period of time in which to commence the activity and generally does not grant extensions.

Finally, § 5.13(h) states that the OCC can nullify a filing decision if, for example, it discovers a misrepresentation or omission in a filing or supporting material after it renders a filing decision. A person responsible for a material misrepresentation or omission may be subject to various sanctions, including criminal penalties. The OCC also may nullify a filing decision that is contrary to law, regulation, or OCC policy or that was granted due to clerical or administrative error or a material mistake of law or fact.

Pursuant to part 116, a Federal savings association filing may receive either expedited treatment or standard treatment. If a filer is eligible for expedited treatment, as determined under § 116.5, it may file its application in the form of a notice. Pursuant to § 116.200, 30 days after filing a notice, the filer may engage in the proposed activity or transaction unless the OCC: (1) Requests additional information; [24] (2) determines that standard treatment is appropriate; (3) suspends the applicable time frame under § 116.190; or (4) disapproves the notice.

Pursuant to § 116.25, an applicant files a standard application if it is not eligible for expedited treatment. Under § 116.210, within 30 calendar days after receiving a standard application, the OCC will: (1) Notify the applicant that the application is complete and review will commence; (2) request more information; or (3) determine that the application is materially deficient, in which case the OCC will not process the filing. If the OCC takes no action, an application is deemed complete and the review period begins. Under § 116.270, this review period is generally 60 calendar days after an application is complete but may be extended. For example, under § 116.270(c), the OCC may extend the review period for up to

[23] For example, § 5.20(j) provides that certain applications to establish a national bank are deemed preliminarily approved as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC takes certain action to remove the filing from expedited review.

[24] Section 116.200(a) explains the sequence of events and timing when the OCC requests additional information about a notice.

30 days for any reason or for as long as needed if the application presents a significant issue of law or policy requiring additional time to resolve. In either situation, the OCC must provide a written notification of any extension.

Section 116.280 explains that the OCC will approve or deny an application before the end of the applicable review period and will notify applicants of the decision. Under § 116.280(b), the application is approved if the OCC fails to notify an applicant.

Section 116.220 provides a detailed explanation of how the OCC will process an application if the OCC requests more information to complete a filing, including the time frames for taking certain actions. Section 116.240(a) explains that even if an application is deemed complete under § 116.210, the OCC may still require the filer to provide additional information to resolve or clarify an issue presented by the application. If the OCC determines that a major issue or law or change of circumstances has arisen, it may notify the filer that the application is now incomplete and require a new public notice to be filed under § 116.250. Under § 116.290, an application that is not approved or denied within two calendar years of filing is deemed withdrawn, subject to certain exceptions.

As is clear, the OCC has two different, albeit similar, sets of application processing procedures. In order to gain the efficiencies inherent in administering a single set of procedures and to create parity for OCC-regulated institutions, we proposed to apply § 5.13 to all OCC filings and to amend § 5.13, as described below.

The OCC did not receive written comments on any of the proposed changes to § 5.13. Commenters at both the Los Angeles and Dallas EGRPRA outreach meetings requested that the OCC make decisions on new charters and other applications at the district level instead of in Washington, DC. We agree with the importance of the relevant district office in the decision-making process, and our current process involves district level input in application decisions as well as our licensing office in Washington. Most filings are processed by the relevant district office and typically involve examination staff familiar with the applicant. The Comptroller's Licensing Manual also encourages applicants to contact the director for district licensing at the appropriate OCC district office to discuss the proposal.[25] However, it is also important for the OCC's Washington office to be involved in the applications process in order to address significant or novel issues, to provide consistency in OCC decision-making, and to utilize staff expertise available in OCC headquarters. For these reasons, we decline to make any changes to our rule to reflect this comment.

We therefore are adopting § 5.13 as proposed.

As a result, Federal savings association filers will need to determine whether a filing is eligible for expedited review under subpart A based on the § 5.3(g) definition of ''eligible bank or eligible savings association.'' Because, as explained above, the criteria in §§ 5.3 and 116.5 are substantively similar, the OCC believes the status of most savings associations as eligible or not eligible will not be affected by the requirement to use the definition in § 5.3, nor does the OCC anticipate that there will be a significant difference in the filings that are eligible for expedited review under the current rules and the rules as revised. Furthermore, unlike § 116.200, part 5, subpart A, does not state the applicable expedited review time frames. These time frames are unique to the type of activity or transaction and are set out in the relevant part 5 section detailing that activity or transaction. If a filing is not eligible for expedited review, the filer must follow the standard review procedures set out in the rules applicable to the particular activity or transaction at issue.

In addition, the OCC is adopting the following proposed changes to § 5.13, which apply to filings related to both national banks and Federal savings associations. Specifically, the final rule adds a statement to the § 5.13(a) introductory language providing that when reviewing a filing, the OCC may consider information available from any source, including any comments submitted by interested parties or views expressed by interested parties at meetings with the OCC.

With respect to § 5.13(a)(2) concerning expedited review, the final rule removes the clause that states that the OCC grants eligible banks expedited review within a specified time, ''including any extension of the comment period granted pursuant to § 5.10.'' This change reflects the fact that when the OCC grants an extension of the comment period under § 5.10 a filing is no longer considered under the expedited review procedures. The circumstances that lead to an extended comment period are generally not compatible with expedited review.

In addition, as discussed above, § 5.13(a)(2)(i) provides that the OCC may extend the expedited review period for a filing subject to the CRA for up to 10 days if a comment makes certain assertions about the CRA and § 5.13(a)(2)(ii) provides that the OCC will remove a filing from expedited review if the filing presents significant supervisory, CRA (if applicable), compliance, legal or policy concerns or issues. This section also explains what constitutes a significant CRA concern in this context.

The final rule combines § 5.13(a)(2)(i) and (ii) into new § 5.13(a)(2)(i). These changes simplify § 5.13(a)(2) and are not intended to have a substantive effect on expedited review procedures. Comments and concerns about the CRA will continue to be given the same weight. The OCC also is adopting other proposed minor, technical, or conforming changes to § 5.13.

Organizing a National Bank or Federal Savings Association; Federal Savings Association Charters and Bylaws (§ 5.20, New § 5.21, New § 5.22)

Overview. Twelve CFR 5.20 sets forth the requirements and procedures involved in organizing a *de novo* national bank. Corresponding rules applicable to organizing Federal savings associations are set forth in various CFR parts: Part 143 sets forth the requirements and procedures for organizing a Federal mutual savings association; part 144 covers the charter and bylaws of Federal mutual savings associations; and part 152 sets forth the requirements and procedures for organizing a Federal stock savings association and also contains the requirements for the charter and bylaws of Federal stock savings associations, as well as related matters, including shareholders, board of directors, and officers. In addition, § 163.1 imposes certain rules concerning a Federal savings association's charter and bylaws.

Many of the procedures organizers must follow to charter a national bank or Federal savings association are substantively similar. The OCC believes that many of these rules should be coordinated and harmonized to promote consistency and equal treatment between the two types of institutions and to remove unnecessary regulatory burden where possible. To accomplish these goals, the proposed rule amended § 5.20 to include Federal savings associations, added to § 5.20 some provisions that address the organizing process currently in parts 143 and 152, and removed other provisions in part 143, 152, and 163 that address the organizing process (§§ 143.2 through 143.7, 152.1 and 152.2, and 163.1).

[25] *See, e.g.,* the Charters Booklet of the Comptroller's Licensing Manual, p. 23.

The regulations for national banks and for Federal savings associations treat the provisions related to ''organizing documents'' (organization certificate and articles of association for national banks, charter for Federal savings associations, and bylaws) differently.[26] For national banks, there are several applicable statutes, but few regulations.[27] For Federal savings associations, there are no statutory requirements, but §§ 144.1 and 152.3 contain requirements for charters of Federal mutual savings associations and Federal stock savings associations, respectively, and §§ 144.2 and 152.4 contain requirements for the bylaws of Federal mutual savings associations and Federal stock savings associations, respectively. Also, the charter provisions for Federal mutual savings associations are substantially different from national banks and Federal stock savings associations. These differences stem from the unique characteristics of Federal mutual charters, such as the inability of members to communicate directly with each other (because membership is based on the depository relationship) under § 144.8, the use of ''running proxies,'' [28] and the potential that certain charter or bylaw provisions could later affect a mutual-to-stock conversion by the association. These characteristics require greater controls over changes to the Federal mutual charter to prevent the inappropriate transfer of the association's equity and to prevent provisions that may impede a mutual-to-stock conversion. In order to preserve the enforceability of the Federal savings association charter and bylaw requirements and to ensure the necessary controls unique to the Federal mutual savings association charter, we proposed to continue to include separate provisions concerning a Federal savings association's charter and bylaws.

Specifically, we proposed to amend 12 CFR part 5, subpart B, by: (1) Revising § 5.20 to apply to both national banks and Federal savings associations and to make certain other changes as described below; (2) adding a new § 5.21 (based on part 144) to specify the language and requirements for the Federal mutual savings association charter, bylaws, and charter amendments and to require a Federal mutual savings association to make its charter and bylaws available to accountholders; and (3) adding a new § 5.22 (based on §§ 152.3 through 152.11) to specify the language and requirements for the Federal stock savings association charter, bylaws, charter amendments, and related matters. In addition, we proposed to amend parts 143, 144, 152, and 163 by rescinding various provisions in those parts concerning charters and bylaws.

Applying Existing National Bank Requirements to Federal Savings Associations. The majority of the proposed changes to § 5.20 apply existing requirements for organizing a national bank to organizing a Federal savings association by inserting ''Federal savings association'' where appropriate. Most of these amendments result in little or no change to existing practices concerning an application to charter a Federal savings association. However, potential organizers should carefully review the following amendments that would change the current process.

First, based on statute and longstanding practice, the OCC uses a two-part approval process for *de novo* national bank charters. The OCC will issue a preliminary approval after an application is filed, if the OCC determines it meets the applicable standards. Once it has received this approval, the national bank in organization proceeds to organize, raise capital, obtain any other regulatory approvals, and become ready to commence business. Many of these steps are not specified in § 5.20 but instead are provided in the OCC's preliminary approval and in the Charters Booklet of the Comptroller's Licensing Manual. The OCC issues a ''final approval'' and the national bank's charter only after all these steps are concluded, including compliance with any conditions imposed in the preliminary approval. Under the current Federal savings association rule, the OCC issues only one approval before it issues the charter but this approval is subject to the institution completing various post-approval organizational steps and other requirements before it can commence business. These steps and requirements are specified in §§ 143.4, 143.5, 143.6, and 152.1(c) through 152.1(i).

The national bank and Federal savings association processes in practice may not be different, but the OCC believes that use of a formal two-part approval framework provides more certainty and reduces the risk of an institution inadvertently operating before it has completed all required steps. Applying the bank rule's two-step approval process to savings associations also enhances consistency between the chartering application process for national banks and Federal savings associations. Therefore, we proposed to make an application to charter a Federal savings association subject to the two-part approval process contained in § 5.20(i)(5) and to remove §§ 143.4, 143.5, 143.6, and 152.1(c) through 152.1(i). We did not receive any comments on this change and are adopting it as proposed.

Second, § 5.20(i)(5)(iv) provides that preliminary approval expires if the national bank has not raised the required capital within 12 months or has not commenced business within 18 months. Sections 143.5(d) and 152.1(i) provide that a Federal savings association's charter becomes void if organization is not completed within six months after approval. The OCC proposed to amend § 5.20(i)(5)(iv) to apply the same 12- and 18-month expiration periods to Federal savings associations, rather than the six-month period. We received one comment in support of this change, and we are adopting it as proposed.

Third, we proposed to add Federal savings associations and savings and loan holding companies to § 5.20(j), which allows for expedited review of an application to establish a full-service national bank filed by a bank holding company with a lead depository institution that is an eligible depository institution. The current regulations for chartering a *de novo* Federal savings association do not have a comparable expedited review process. Under this expedited review, the application is deemed preliminarily approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC notifies the applicant prior to that date that: (1) The filing is not eligible for expedited review, (2) the OCC is extending the review period, or (3) the OCC has determined the proposed bank

[26] It may be helpful to clarify terminology. For national banks, the term ''charter'' is used to refer to the certificate of authority to commence banking issued by the OCC under 12 U.S.C. 27. A national bank's ''articles of association'' is similar to a business corporation's articles of incorporation setting out the general features of the business's organizational structure and purpose. A Federal savings association's ''charter'' issued by the OCC under 12 U.S.C. 1464(a)(2) is the agency's authorization to engage in business as a savings association, but it also contains provisions comparable to a national bank's articles of association.

[27] Additional guidance for national banks is provided by sample articles and bylaws in the Comptroller's Licensing Manual (*www.occ.gov/publications/publications-by-type/licensing-manuals/index-licensing-manuals.html#sd*) and by review of the proposed documents during the application process.

[28] A ''running proxy'' generally is a proxy executed by a member of a mutual savings association, which authorizes directors of the association to cast the votes the member otherwise would be authorized to cast, and which, rather than pertaining to a specific member meeting, is effective for an indefinite period of time.

will offer banking services that are materially different than those provided by the lead depository institution of the holding company. We also proposed to limit the availability of this expedited review to applications to charter a national bank or Federal savings association where the existing lead depository institution is an eligible national bank or eligible Federal savings association. In those cases, the OCC will have knowledge and experience of the lead institution's operations and will be familiar with the holding company. In cases where a state institution is the lead depository institution, the OCC will not have that knowledge and experience, and we believe expedited review would not be appropriate. We did not receive any comments on these changes, and are adopting the amendments as proposed.[29]

Fourth, the OCC is adopting the proposal to add Federal savings associations to § 5.20(k)(3), which addresses investments in bankers' banks and § 5.20(l), which addresses chartering special purpose institutions. These provisions reflect authority that national banks and Federal savings associations possess. We did not receive any comments on this change.

Fifth, parts 143, 144, 152, and 163 contain various filing procedural matters. As discussed above, the OCC is amending part 5, subpart A, rules of general applicability, to include filing rules and procedures for Federal savings associations for all matters covered by part 5. Thus, because Federal savings associations are included in § 5.20 and new §§ 5.21 and 5.22 are added to part 5, filings related to the organizing process and to charters and bylaws will be governed by the filing provisions in subpart A. The final rule, therefore does not include the filing procedures provisions in parts 143, 144, 152, and 163 in the amendments to § 5.20, or in new §§ 5.21 and 5.22.

Amendments That Specifically Cover Federal Savings Association Matters. The OCC proposed to incorporate certain provisions contained in parts 143 and 152 into § 5.20. Specifically, with respect to an application to organize a Federal savings association, section 5(e) of the Home Owners' Loan Act (HOLA) [30] requires the OCC to consider whether: (1) The applicants are of good character and responsibility; (2) there is a need for the association in the community to be served; (3) there is a reasonable probability of usefulness and success; and (4) there will be undue injury to existing local thrift and home financing institutions. These criteria are included in §§ 143.2(g)(1) and 152.1(b)(1), and the proposed rule added them to § 5.20(e). We received one comment suggesting that the OCC should no longer consider whether there is necessity for the Federal savings association in the community to be served because this would be duplicative of other factors the OCC considers, such as probability of usefulness and success under § 152.1(b)(1)(iii). However, the OCC's consideration of whether a ''necessity exists'' is required by section 5(e) of the HOLA. We therefore adopt the amendments as proposed.

Sections 143.2(g)(2)(i) and 152.1(b)(3)(i) provide that approval of an application to organize a Federal mutual or stock savings association, respectively, is conditioned on OCC receipt of written confirmation from the FDIC that accounts will be insured. Similar requirements appear in §§ 143.5(c) and 152.1(f) (when a charter is issued, a Federal savings association, or a Federal stock savings association, respectively, must promptly meet all requirements necessary to obtain FDIC insurance of its accounts), as well as §§ 143.5(d) and 152.1(h)(1) (organization of a Federal savings association, or a Federal stock savings association, respectively, is complete when, among other things, the OCC receives confirmation of FDIC insurance).

For these reasons, the OCC proposed in § 5.20(e)(3) to retain the requirement that all Federal savings associations be insured by the FDIC. We did not receive any comments on this proposed change and adopt the amendment as proposed.

Application of Federal Savings Association Application Requirements to National Bank Applications. The OCC proposed to amend § 5.20 to apply certain requirements applicable to Federal savings associations to both national banks and Federal savings associations. First, § 143.1(a) prohibits a Federal savings association from adopting a title that misrepresents the nature of the institution or the services it offers. The OCC believes that incorporating such a provision in a regulation is good public policy because it protects both customers and the institution. Therefore, we proposed to amend § 5.20(e)(1) to apply this requirement to both Federal savings associations and national banks. We received one comment in support of this proposal and we adopt the amendment as proposed.

Second, § 143.3(b)(1) requires that all securities of a particular class in an initial offering must be sold at the same price. The OCC proposed to amend § 5.20(i)(5)(iii) to apply this requirement to both Federal savings associations and national banks. This requirement promotes fairness and uniformity, does not allow insiders to gain an unfair advantage over other shareholders, and discourages the formation of an institution for speculative purposes. Moreover, the FDIC also imposes this requirement in determining whether to approve an application for deposit insurance.[31] We did not receive any comments on this proposed change and adopt it as proposed.

Third, §§ 143.5(d) and 152.1(i) require that, in the event the organization of a Federal savings association is not completed, all cash collected on subscriptions shall be returned. We proposed to amend § 5.20(i)(5)(iv) to apply this requirement to both Federal savings associations and national banks. We received no comments on this proposed change and adopt it as proposed.

Elimination of Certain Federal Savings Association Approval Criteria. The OCC proposed to rescind the following provisions of parts 143 and 152 that are redundant, unnecessary, or no longer appropriate.

First, the OCC did not propose that § 5.20 include §§ 143.2(g)(1) and 152.1(b)(1), which require the OCC to consider whether the Federal savings association will provide credit for housing in a safe and sound manner and whether the factors in § 143.3 (regarding capitalization, business and investment plans, the board of directors, and management) will be met. These approval criteria are not statutorily required. In most cases, these factors are similar to factors the OCC currently considers either under § 5.20 or as a matter of practice. Moreover, the provision of housing credit also is addressed by the lending and investment provisions of 12 U.S.C. 1464(c) and the qualified thrift lender test of 12 U.S.C. 1467a(m).

[29] We note that we received comments at the Los Angeles EGRPRA outreach meeting requesting that the Agencies shorten their review period for *de novo* applications. In general, the OCC review period is 120 days for independent national banks and Federal savings associations and 45 to 90 days for institutions that are part of a holding company. The OCC believes that this timing is appropriate as it provides us with sufficient time to complete our analysis of the application, including the assessment of proposed management and the reasonableness of the proposed business plan. We therefore decline to make any change to this review period.

[30] 12 U.S.C. 1464(e).

[31] *See* FDIC Statement of Policy on Applications for Deposit Insurance, 63 FR 44752, 44757 (Aug. 20, 1998), and FDIC Financial Institution Letter FIL–56–2014 (Nov. 20, 2014) and related Q&As at *https://www.fdic.gov/news/news/financial/2014/fil14056a.pdf*).

Second, as proposed, the final rule does not include the requirement in § 143.3(d) that the majority of a de novo Federal savings association's board of directors be representative of the state in which the association is located. We believe that this requirement is outdated and unnecessary given the advanced communication technology available today, and that it may unnecessarily impede the formation of new Federal savings associations. We note that one commenter to the June EGRPRA notice requested that we remove this requirement. The final rule retains the existing provision in § 5.20(g)(1), applicable to Federal savings association by this rulemaking, that the institution's initial board of directors generally is composed of many, if not all, of the organizers of the institution, and that the organizing group must include diverse community involvement.

Third, the OCC proposed to rescind §§ 143.7 and 152.17, which exempt from the requirements of part 143 and §§ 152.1 and 152.2 Federal savings associations created in connection with an association in default or in danger of default. These provisions are not necessary in light of the FDIC's authority, as part of the resolution process, to create new and bridge Federal savings associations under 12 U.S.C. 1821(m) and (n).

Fourth, we proposed to rescind § 143.3(f), which provides that the normal requirements that apply to an application to charter a Federal savings association do not apply to a supervisory transaction. This provision is not necessary because the OCC has the ability to waive such requirements under 12 CFR 5.2(b). Also, we proposed to rescind the requirements in §§ 143.5(c) and 152.1(f) for a proposed Federal savings association to promptly qualify as a member of a Federal Home Loan Bank. The HOLA no longer requires such membership.

We did not receive comments opposed to the removal of these provisions. Therefore, we adopt the amendments as proposed.

Amendments to Reflect Current OCC Policy or Practice. The OCC proposed several amendments to update § 5.20 to reflect current OCC policy or practice. Specifically, the OCC proposed to amend § 5.20(f)(1) to update the OCC's general policy in making determinations regarding charter applications to reflect the OCC's statutory mission as amended in section 314 of the Dodd-Frank Act.[32]

Second, § 5.20(g)(2) notes that, as a condition of a charter approval, the OCC retains the right to object to the hiring of any officer or appointment or election of any director for a two-year period from the date the institution commences business. We proposed to clarify that, in appropriate instances, the OCC may impose this condition for a longer period. This regulatory change reflects current authority and practice.

Third, § 5.20(g)(3)(ii) requires a proposed director to be able to supply or have a realistic plan to enable the institution to obtain capital when needed. The OCC proposed to clarify that this requirement applies to the proposed directors as a group, rather than each director individually.

We did not receive comments on any of these proposed changes. Therefore, we adopt the amendments as proposed.

Federal Mutual Savings Association Charter, Bylaws and Related Provisions. As discussed above, the OCC believes it is necessary and appropriate to continue to include separate regulations setting forth the provisions concerning a Federal savings association's charter and bylaws. With respect to Federal mutual savings associations, these provisions are currently in part 144. The OCC proposed to add a new § 5.21, ''Federal Mutual Savings Associations Charters and Bylaws,'' which incorporates most of part 144. We did not receive comments on any of proposed new § 5.21 and adopt this section as proposed, with minor changes to § 5.21(j), discussed below.

New § 5.21(d) sets forth exceptions to the rules of general applicability. More specifically, it provides that §§ 5.8 through 5.11 do not apply to this section. These sections provide for public notice, public availability, comments and hearings on an application. The OCC believes it is not necessary to subject the charter and bylaws requirements to these provisions. This belief is consistent with current requirements for Federal mutual savings associations as well as national banks. New § 5.21(e) prescribes the language and requirements for a Federal mutual savings association charter and is substantively identical to § 144.1. New § 5.21(f) through (h) cover matters related to charter amendments and are substantively identical to § 144.2. New § 5.21(i) requires a Federal mutual savings association to make its charter, bylaws, and all amendments available to accountholders at all times in each savings association office, and to deliver to any accountholders a copy of the charter, bylaws or amendments, upon request. This provision is substantively identical to § 144.7.[33]

New § 5.21(j) specifies the language and requirements for Federal mutual savings association bylaws. This new paragraph reflects the provisions in § 144.5. To reflect advances in technology, the final rule updates the provision regarding meetings of the board of directors by permitting telephonic or electronic participation of board members. The current rule provides only for telephonic participation. We note that the final rule also adds section headings and makes corresponding paragraph numbering changes to § 5.21(j).

Section 144.5(b)(11) provides that directors may only be removed ''for cause'' as defined in § 163.39 of this chapter, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors,'' and § 144.5(b)(10) provides that ''[a]ny officer may be removed by the board of directors with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed.'' For ease of use, the OCC is including the definition of ''for cause'' in new § 5.21(j)(2)(x)(B), rather than cross-referencing the definition in § 163.39. Where the term ''for cause'' is used elsewhere in § 5.21, and in § 5.22, for Federal stock savings associations, the regulation references the definition at § 5.21(j)(2)(x)(B).

The OCC believes that many of the bylaw provisions in § 144.5 are unnecessarily detailed or self-evident. Therefore, new § 5.21 does not include the provisions described below.[34]

Section 144.5(b)(1) discusses the annual meeting of members. It provides, among other things, that the meeting be held ''as designated by its board of directors, at a location within the state that constitutes the principal place of business of the association, or at any other convenient place the board of directors may designate.'' New § 5.21(j)(2)(i) does not include the requirement that the meeting be held in the state that constitutes the principal place of business of the association. The OCC believes that this requirement introduces unnecessary detail into the regulation and that, in certain cases, there may be locations outside the state constituting the association's principal place of business at which the annual meeting may be held that are appropriately convenient to members.

[32] 12 U.S.C. 1.

[33] *See* related discussion concerning 12 CFR 163.1(b) *infra.*

[34] Federal mutual savings associations will not be required to amend their existing bylaws to conform to these changes.

Section 144.5(b)(2) provides, among other things, that the subject matter of a special shareholder meeting must be established in the notice for such meeting. The OCC believes this provision is self-evident and unnecessarily detailed and it is not included in new § 5.21(j).

Section 144.5(b)(3) covers the requirements for providing notice of meetings to members. Among other things, it provides that notice must be provided at a member's last address appearing on the books of the association. The OCC believes this provision merely states the obvious and it is not included in new § 5.21(j)(2)(iii).

Section 144.5(b)(4) states that the purpose of determining the record date is to determine the ''members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose.'' The OCC believes this provision is self-evident and it is not included in new § 5.21(j)(2)(iv).

Section 144.5(b)(6) provides that procedures must be established for voting by proxy pursuant to the rules and regulations of the OCC, ''including the placing of such proxies on file with the secretary of the association, for verification, prior to the convening of such meeting.'' The OCC believes the inclusion language is self-evident and unnecessarily detailed and it is not included in § 5.21(j)(2)(vi).

Section 144.5(b)(9) provides that board of director meetings ''shall be under the direction of a chairman, appointed annually by the board; or in the absence of the chairman, the meetings shall be under the direction of the president.'' The OCC believes this provision is unnecessarily detailed and it is not included in § 5.21(j)(2)(ix).

Section 144.5(b)(10) provides, among other things, that ''[a]ll officers and agents of the association, as between themselves and the association, shall have such authority and perform such duties in the management of the association as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. In the absence of any such provision, officers shall have such powers and duties as generally pertain to their respective offices.'' The OCC believes this provision is unnecessary and self-evident and it is not included in § 5.21(j)(2)(x).

Section 144.5(b)(11) covers vacancies, resignation, and removal of directors. New § 5.21(j)(2)(xi) does not include the requirements in § 144.5(b)(11) that directors be elected by ballot and that resignation of a director be by written notice. The OCC believes that these provisions are self-evident.

Section 144.5(b)(12) covers the powers of the board of directors. It provides, among other things, that a board may, by resolution, ''appoint from among its members and remove an executive committee and one or more other committees, which committee[s] shall have and may exercise all the powers of the board between the meetings or the board; but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the association. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law.'' This section further provides that a board may fix the compensation of directors, officers, and employees. The OCC believes these provisions are self-evident and unnecessarily detailed, and therefore, they are not included in § 5.21(j)(2)(xii).

Section 144.5(b)(14) provides in part that procedures for the introduction of new business at the annual meeting may require that such new business be stated in writing and filed with the secretary prior to the annual meeting at least 30 days prior to the date of the annual meeting. The OCC believes this provision is overly detailed and unnecessary. Accordingly, the OCC is not including this provision in new § 5.21(j)(2)(xiv).

Finally, § 144.5(b)(16) provides that the bylaws may address age limitations for directors or officers as long as they are consistent with applicable Federal law, rules or regulations. The OCC believes this provision is self-evident and unnecessary and therefore it is not included in new § 5.21(j)(2)(xvi).

Federal Stock Savings Association Charter, Bylaws and Related Provisions. The provisions concerning the charter and bylaws of a Federal stock savings association, as well as related provisions, are currently in §§ 152.3 through 152.9. The OCC proposed to add a new § 5.22, ''Federal Stock Savings Association Charters and Bylaws,'' which incorporates most of §§ 152.3 through 152.9. We did not receive any comments on this proposed change and are adopting new § 5.22 as proposed, with one change to § 5.22(l)(1) as discussed below.

New § 5.22(d) sets forth exceptions to the rules of general applicability. More specifically, it provides that §§ 5.8 through 5.11 do not apply to this section. These sections provide for public notice, public availability, comments and hearings on an application. The OCC believes it is not necessary to subject the charter and bylaws requirements to these provisions.

New § 5.22(e) prescribes the language and requirements for a Federal stock savings association charter and is substantively identical to § 152.3. New § 5.22(f) through (i) cover matters related to charter amendments and are substantively identical to § 152.4, with the addition of one provision. Section 152.4(b)(8) provides that a Federal stock savings association may amend its charter by adding certain anti-takeover provisions following mutual to stock conversions. One such provision is a prohibition on a person acquiring more than 10 percent of any class of equity securities of the association, unless ''the purchase of shares [is] by a tax-qualified employee stock benefit plan which is exempt from the approval requirements under § 174.3(c)(2)(i)(D) of the OCC's regulations.'' The final rule eliminates the cross-reference and includes the appropriate language in § 5.22(g)(8). The OCC does not intend for this amendment to have any substantive effect.

New § 5.22(j) specifies the requirements for adopting and filing Federal stock savings association bylaws. This paragraph reflects the provisions in § 152.5 with two exceptions. The first sentence of § 152.5(a) provides that ''[a]t its first organizational meeting, the board of directors of a Federal stock association shall adopt a set of bylaws for the administration and regulation of its affairs.'' The third sentence requires the bylaws to contain sufficient provisions to govern the association in accordance with the requirements of other sections of part 152 and prohibits the bylaws from containing a provision that is inconsistent with those sections or with applicable laws, rules, regulations or the association's charter. The OCC believes that these two provisions are unnecessarily detailed and self-evident and they are not included in new § 5.22(j).

The OCC is adding a new § 5.22(k) to address shareholder meetings and related matters. This paragraph reflects the provisions in § 152.6 with two exceptions. Section 152.6(a) provides, among other things, that shareholder meetings must be held in the state in which the association has its principal place of business. With respect to shareholder voting by proxy, § 152.6(f) provides, in part, that a ''proxy may designate as holder a corporation, partnership or company as defined in

part 174 of this chapter, or other person.'' Section 5.22(k) does not include these provisions because the OCC believes they are unnecessary.[35]

The OCC is adding a new § 5.22(l) to address matters involving a Federal stock savings association's board of directors. This paragraph reflects the provisions in § 152.7, with certain exceptions. Section 152.7(b) sets forth the permissible number and terms of directors to be included in an association's bylaws. It provides, among other things, that in ''the case of a converting or newly chartered association where all directors shall be elected at the first election of directors, if a staggered board is chosen, the terms shall be staggered in length from one to three years.'' Section 152.7(g) addresses matters concerning executive and other committees of a board of directors. It provides in pertinent part that each committee, to the extent provided in the resolution or bylaws of the association, shall have and may exercise all of the authority of the board of directors, subject to certain exceptions. The OCC believes these provisions are overly detailed and unnecessary. Accordingly, § 5.22(l)(2) and (7), respectively, do not include these provisions. In addition, this final rule does not include the provision in proposed § 5.22(l)(1), taken from § 152.7(a), that requires the savings association's board of directors to annually elect a chairman of the board from among its members and designate the chairman of the board, when present, to preside over meetings. As proposed, the final rule does not include this requirement in the new Federal mutual savings associations rule, § 5.21 because we find it to be unnecessarily detailed. We are removing this provision from § 5.22(l)(1) for the same reason and to conform our rules for stock and mutual Federal savings associations.

New § 5.22(m) addresses matters involving a Federal stock savings association's officers. This paragraph is substantively identical to § 152.8, with one exception. Section 152.8 mandates that a Federal stock savings association have certain officers. It further provides that the ''board of directors also may elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.'' The OCC believes that the quoted provision is self-evident and unnecessary and therefore has not included it in new § 5.22(m).

New § 5.22(n) addresses stock certificates. This new paragraph is substantively identical to § 152.9, with one exception. Section 152.9(a) provides in pertinent part that the ''certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the association itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified.'' The OCC believes this provision is overly detailed and is not included in new § 5.22(n)(1).

Federal Savings Association Charter and Bylaws Availability Requirement. Section 163.1(b) requires each Federal savings association to cause a true copy of its charter and bylaws and all amendments thereto to be available to accountholders at all times in each office of the savings association, and to deliver to any accountholders a copy of such charter and bylaws or amendments thereto, upon request. As discussed above, § 144.7 imposes the same requirement, but is applicable only to Federal mutual savings associations.

There is no comparable requirement for national banks and the OCC believes this provision is no longer necessary for Federal stock savings associations as this information is relatively easy for accountholders of these types of institutions to obtain. Conversely, accountholders of Federal mutual savings associations may not have easy access to these documents in light of the inability of accountholders to communicate directly with each other under § 144.8. Accordingly, the final rule continues to apply this requirement only with respect to Federal mutual savings associations under new § 5.21(i).

Disposition of current Federal savings association organization, charter, and bylaws provisions. As discussed above, we proposed amendments to remove from Title 12 of the Code of Federal Regulations §§ 143.2 through 143.7, all of part 144 except § 144.8, § 152.1(b)(1), § 152.1(c) through (i), §§ 152.2 through 152.9, § 152.17, § 163.1(b), and § 163.22(b)(1)(ii) and (b)(2). We did not receive any comments on these proposed changes and are adopting the amendments as proposed.

Section 144.8, which addresses communication between members of a Federal mutual savings association, is not a licensing regulation and does not involve an application process. The OCC is leaving it unchanged. Because it will be the only section that remains in part 144, the OCC is renaming part 144 as part 144—Federal mutual savings associations—communication between members.

Other provisions of § 152.2, which provide procedures for the organization of interim Federal savings associations, are addressed in revisions to the business combinations regulation—§ 5.33, described below. The remaining provisions of part 143, part 152, and part 163 contain other provisions applicable to Federal mutual and stock savings associations. The OCC is rescinding some of these provisions as described elsewhere in this preamble.

Charter Conversions (New § 5.23, § 5.24, New § 5.25)

Twelve CFR 5.24 sets forth the rules and procedures that a state bank, state savings association, or Federal savings association must follow to convert to a national bank and for a national bank to convert to a state bank or Federal or state savings association. The OCC's rules for a mutual depository institution to convert to a Federal mutual savings association are at 12 CFR 143.8 through 143.14, and the rules for a stock form depository institution to convert to a Federal stock savings association are at 12 CFR 152.18. The rules for a Federal savings association to convert to a national bank or state bank are set forth at 12 CFR 152.19 and 163.22(b)(1)(ii) and (b)(2). While there are some differences in procedures, as discussed below, the rules for national banks and Federal savings associations are substantively similar.

We proposed to simplify this regulatory framework by: (1) Revising § 5.24 to include only rules for converting into a national bank, (2) placing all rules for converting into a Federal savings association (either stock or mutual) in new § 5.23, and (3) placing rules for conversion from national bank and Federal savings association charters in new § 5.25. We also proposed additional substantive and technical changes to these rules. The substantive changes include provisions implementing section 612 of the Dodd-Frank Act, which prohibits conversions from state to Federal charter, or Federal to state charter, in certain circumstances and adds requirements to the conversion process.

[35] Federal stock savings associations will not be required to amend their existing bylaws to conform to these changes.

We did not receive any comments related to charter conversions. We therefore adopt the amendments to these provisions as proposed, with the changes described below.

Implementation of section 612 of the Dodd-Frank Act. Section 612 of the Dodd-Frank Act added several provisions that address conversions. First, section 612(b) amended 12 U.S.C. 35 to provide that the OCC may not approve an application by a state bank or a state savings association to convert to a national bank or Federal savings association during any period in which the state bank or state savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, a state banking supervisor or the appropriate Federal banking agency with respect to a significant supervisory matter or a final enforcement action by a state Attorney General. We do not need to amend our regulations to implement this prohibition because current regulations include compliance with applicable law among the criteria for approval or denial, and this criterion is carried over in the final rule.[36] Specifically, §§ 5.24(e)(2)(x) and 5.23(d)(2)(ii)(J) require the conversion application to include information about enforcement actions and other supervisory criticisms and the applicant's analysis of whether conversion is permissible under 12 U.S.C. 35, as amended by section 612. We will use this information to assess the permissibility of the proposed conversion under section 35, including the possibility of using the exception to the prohibition on conversions provided in section 612.[37]

Second, section 612(b) added a new section 12 U.S.C. 214d prohibiting a national bank from converting to a state bank or state savings association during any period in which the national bank is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the OCC with respect to a significant supervisory matter. Section 612(c) similarly added a new paragraph (6) to the end of section 5(i) of the HOLA [38] prohibiting a Federal savings association from converting to a state bank or state savings association during any period in which the Federal savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the OTS or the OCC with respect to a significant supervisory matter. The exception to the prohibitions on conversions in section 612(d), discussed above, applies to the prohibitions in sections 214d and 1464(i)(6). As amended by this final rule, § 5.25(d)(3) requires that the information that must be submitted to the OCC when a national bank or Federal savings association plans to convert to a state bank or state savings association must include a discussion of the impact of any enforcement action on the permissibility of the conversion under 12 U.S.C. 214d or 1464(i)(6). This discussion will assist the OCC in monitoring compliance with these statutes.

Third, paragraph (e)(1) of section 612 requires that at the time an insured depository institution files a conversion application, it must transmit a copy of the conversion application to both the appropriate Federal banking agency for the institution and the Federal banking agency that would become the appropriate Federal banking agency for the institution after the proposed conversion. Reflecting this statutory requirement, as noted above, the final rule adds to our regulations at §§ 5.23(d)(2)(ii), 5.24(e)(2), and 5.25(d)(3)(i)(last sentence) a requirement to send a copy of the conversion application to the appropriate Federal banking agencies. Including the requirement in our regulations will help ensure applicants are aware of this requirement.

Conversion to a national bank charter. As part of the reorganization of the conversion rules, the final rule moves the provisions governing national bank conversions to a state bank or Federal savings association from § 5.24 to new §§ 5.25 and 5.23, respectively. As a result, § 5.24 applies only to conversions to become a national bank. The final rule also makes several other changes to § 5.24.

The final rule adds ''stock state savings associations'' to the description of the types of institutions that can apply to convert to a national bank and also adds the word ''stock'' before the phrase ''Federal savings associations'' throughout revised § 5.24. Stock state savings associations currently are included in the rule because they are within the definition of ''state bank'' incorporated from 12 U.S.C. 214(a). We are adding the express term both in the interest of eliminating any confusion and because section 612 added the term ''state savings association'' to 12 U.S.C. 35. We are adding the term ''stock'' to Federal savings association for clarity as well. National banks are corporate bodies, and a mutual institution cannot become a national bank unless it has first changed into corporate form under other law. These changes clarify the existing regulation and have no substantive impact.

Section 5.24(d) states the OCC's policy for approving and disapproving conversions to national bank charters. The final rule adds a statement that the institution seeking to convert to a national bank charter must obtain all necessary regulatory and shareholder approvals. Although this requirement is not new, it was not previously stated in § 5.24. There is a similar provision in the current Federal savings association regulation, § 143.8(a)(2). The final rule continues this requirement for Federal savings associations in § 5.23, and adds this requirement for national banks as well.

The final rule also clarifies the information the applicant must include in the application. As proposed, § 5.24(e)(2)(vii) in the final rule requires applicants to add bank service company investments and other equity investments to the current requirement to identify subsidiaries. This change reflects the OCC's current practice in conversion applications of reviewing the legal permissibility for the converted national bank to continue to hold these investments.

The OCC currently requests an applicant to include a business plan in the application on a case-by-case basis

[36] *See* §§ 5.23(d)(1) and 5.24(d) (each incorporating § 5.13(b)).

[37] Subsection (d) of section 612 provides for an exception to the prohibition. Specifically, the prohibition on conversion does not apply if: (1) The Federal banking agency that would be the appropriate Federal banking agency after the conversion (the OCC in conversions of a state-chartered institution to a national bank or Federal savings association) gives written notice of the proposed conversion to the current Federal appropriate banking agency or state bank supervisor that issued the enforcement action, including a plan to address the significant supervisory matter in a manner that is consistent with the safe and sound operation of the institution; (2) the current Federal appropriate banking agency or state bank supervisor that issued the enforcement action does not object to the conversion or the plan; (3) after conversion, the plan is implemented; and (4) in the case of a final enforcement action by a state Attorney General, approval of the conversion is conditioned on the institution's compliance with the terms of such final enforcement action. Section 612(d) is codified as a note attached to 12 U.S.C. 35. Applicants should be aware that the Agencies have issued interagency guidance stating the Agencies' position that such exceptions would be rare, and generally would occur only when the institution already has substantially addressed the matters in the enforcement action or there are substantial changes in circumstances. *See* Interagency Statement on Section 612 of the Dodd-Frank Act: Restrictions on Conversions of Troubled Banks (November 26, 2012), available at *www.occ.gov/news-issuances/bulletins/2012/bulletin-2012-39a.pdf.*

[38] Section 5(i), 12 U.S.C. 1464(i)(6).

during the application process. Proposed 5.24(e)(2)(ix) requires the application to include a business plan if the converting institution: (1) Has been operating for less than three years, or (2) plans to make significant changes to its business after the conversion.[39] We believe this requirement should apply to all such applications because a business plan would provide valuable information about the financial institution's safety and soundness and allow the OCC to make a more informed decision. The final rule amends this provision to also require a business plan at the request of the OCC. This amendment allows the OCC to require a business plan in other circumstances, as necessary, and conforms this provision to that included in new § 5.23(d)(2)(ii)(I). Though the preamble to the proposed rule referred to this amendment, it was inadvertently omitted in the regulatory text of proposed § 5.24.

Section 5.24 currently addresses the OCC's authority to permit a national bank to retain nonconforming assets of a converting state bank, subject to the requirements in 12 U.S.C. 35. The final rule (redesignated as paragraph (e)(4) in the revised regulation) clarifies that a converted national bank also may be permitted to retain nonconforming activities (as well as assets) of a state bank or stock state savings association and nonconforming assets or activities of a Federal stock savings association for a transition period after conversion. We believe this provision facilitates the transition from a state institution or Federal savings association to a national bank and also incorporates current OCC practice.

Current OCC rules require both a notice or application to the OCC to convert out of a Federal savings association charter[40] and an application to the OCC to convert to the new national bank charter.[41] The notice or application to convert out must demonstrate compliance with applicable laws regarding the permissibility, requirements, and procedures for the conversion.[42] The proposed rule included both a notice requirement to convert out of the existing charter in proposed § 5.25(e) and the application requirement to convert to a national bank in proposed § 5.24. Upon further review, we are removing the conversion out notice requirement from § 5.25(e) and instead adding a new paragraph (f) to § 5.24 to require a Federal savings association to include the information from this notice in its application to convert to a national bank. This process is less burdensome for Federal savings associations as they will no longer be required to file both a ''conversion out'' notice and a ''conversion in'' application to the OCC to accomplish the conversion transaction.

As proposed, the final rule also amends the expedited review provisions for a conversion application filed by an eligible depository institution. These provisions are set forth in the current rule at § 5.24(d)(4) and redesignated in this final rule as § 5.24(h). The final rule limits the availability of expedited review to applications by institutions already supervised by the OCC (*i.e.,* conversions from a Federal savings association to a national bank pursuant to § 5.24 or from a national bank to a Federal savings association pursuant to § 5.23). In those cases, the OCC is already familiar with the institution. The OCC will require more time to review a state institution applicant's condition and proposal, and therefore, expedited review would not be appropriate in those cases.

The final rule also extends the expedited review period from 30 days to 60 days. New § 5.23(d)(4) contains a similar expedited review provision for conversions of an eligible national bank to a Federal savings association.

In addition, the final rule adds a new paragraph (i) to § 5.24 (paragraph (h) in the proposed rule) providing that the resulting national bank after a conversion is the same business and corporate entity as the converting institution, and all assets, rights, liabilities, obligations, and other business of the converting institution continue in the resulting national bank by operation of law. This paragraph reflects longstanding case law under 12 U.S.C. 35[43] and is similar to statutory provisions in 12 U.S.C. 214b (continuation in conversion of national bank to state bank or merger of national bank into state bank) and 12 U.S.C. 215(e) and 215a(e) (continuation in consolidation or merger of national or state bank into national bank). The specific language is based on 12 U.S.C. 214b and on current provisions governing Federal savings associations at §§ 146.14 (Federal mutual savings associations) and 152.18(b) (Federal stock savings associations).

Finally, the final rule adds provisions to § 5.24 to implement section 612 of the Dodd-Frank Act, which are discussed below, and makes several technical or housekeeping changes to § 5.24 to make it easier to read.

Conversion to a Federal savings association charter. As noted above, the final rule creates a new § 5.23 to address conversions of a mutual depository institution to a Federal mutual savings association or of a stock depository institution to a Federal stock savings association. This new section is similar to § 5.24, conversions to a national bank, except that references to national banking laws are replaced by references to the HOLA, including the statutory criteria in section 5(e) of the HOLA for granting a Federal savings association charter.

The requirements of § 5.23 include many of the requirements in the current Federal savings association conversion regulations. However, the final rule does not retain certain provisions in parts 143 and 152 for which there is no statutory requirement in the HOLA. These include the confidentiality provisions set forth at § 143.8, which instead are addressed under the OCC's general confidentiality regulations, 12 CFR part 4, and the public notice and inspection requirements set forth at § 143.9(a)(2) (incorporating § 143.2(d)), which require public notice and inspection for applications to organize a new savings association. The OCC believes public notice is unnecessary in the case of conversions because the business of the existing institution continues under its new charter. We note that if there are instances where the OCC believes publication is warranted, the OCC could require publication under § 5.23(d)(3), which allows the OCC to require public notice if an application presents significant or novel policy, supervisory, or legal issues.

The final rule excludes a number of provisions in § 143.9 that advise applicants of the various steps in the process. Instead, the OCC addresses this information through the Comptroller's Licensing Manual, application forms, and the application process.

As with the amendments to § 5.24, the final rule adds a new paragraph § 5.23(f) that contains the provision regarding the ''conversion out'' aspect for national banks applying to convert to a Federal stock savings association originally included in proposed § 5.25(e)(1) and (e)(3). As a result, a national bank converting to a Federal stock savings association must include in its application filed pursuant to § 5.23

[39] Appendix G of the ''Charters'' booklet of the Comptroller's Licensing Manual (Significant Deviations after Opening) contains a discussion of what constitutes a ''significant change.''

[40] § 163.22(b).

[41] § 163.22(b)(2).

[42] § 5.24.

[43] *See, e.g., Michigan Insurance Bank* v. *Eldred,* 143 U.S. 293, 300 (1892); *Metropolitan National Bank* v. *Claggett,* 141 U.S. 520, 527 (1891). *See generally,* CJS Banks and Banking, § 529 (citing cases); 10 a.m. Jur. 2d § 203 (citing cases).

information demonstrating compliance with the applicable requirements of 12 U.S.C. 214a instead of including this information in a separate notice to the OCC. This process is less burdensome for national banks because they will not have to file both a notice and an application for these transactions, as provided in the current and proposed rule.

We note that there are four significant differences between §§ 5.24 and 5.23. First, the definition of ''depository institution'' for purposes of § 5.23, which is based on the definition in §§ 143.8(a) and 152.13, includes credit unions, unlike the definition in § 5.3(f), which is used in § 5.24. This is because credit unions may convert to a mutual Federal savings association but not to a national bank. Second, paragraph (c) of § 5.23 provides that the converting institution must have deposits insured by the FDIC or, if it is not so insured, must obtain insurance before converting. While some national banks may be uninsured, *i.e.,* trust banks that do not accept deposits, all Federal savings associations are required to be insured. Third, paragraph (d)(2)(ii)(K) of § 5.23, requires a converting institution that does not meet the qualified thrift lender test of 12 U.S.C. 1467a(m) to include a plan to achieve compliance within a reasonable period of time and to request an exception from the OCC in the application. This requirement reflects agency practice but is not expressly included in the current regulation. Fourth, paragraph (e) of § 5.23 includes certain provisions contained in § 143.10 that are unique to conversions of a mutual depository institution to a Federal mutual savings association. These provisions reflect the unique organizational structure of mutual depository institutions, which are not owned by shareholders but are mutual enterprises composed of depositor-members.

Lastly, the final rule includes provisions in § 5.23 to implement section 612 of the Dodd-Frank Act, as discussed below.

Conversion from a national bank or Federal savings association charter to a state charter. New § 5.25 addresses conversions from a national bank or Federal savings association to a state charter. Proposed § 5.25(d) provided that converting from a Federal charter does not require prior OCC approval. Instead, the institution must file a notice with the OCC. This process is a change for some Federal savings associations. Under the current regulations, Federal savings associations that are not eligible for expedited treatment must file an application to convert to a national bank or state bank.[44] Under the new rule, this notice must contain a copy of its conversion application to the regulator to which it is applying for approval to convert (as required by section 612 of the Dodd-Frank Act), a showing of its compliance with applicable requirements for converting from the charter (as required under the current rule), and a discussion of any issues regarding the permissibility of the conversion under section 612 of Dodd-Frank Act. This section also requires the institution to file a copy of its conversion application with the Federal banking agency that would become its appropriate Federal banking agency after the conversion, pursuant to section 612 of the Dodd-Frank Act, as discussed below.

The proposed rule had required, at new § 5.25(e), institutions planning to convert between a national bank and a Federal savings association to file a notice with the OCC to convert out of the old charter. This filing would be in addition to filing an application to convert to the new charter. As noted above, the final rule removes this notice requirement and instead adds a provision to § 5.23(f) and to § 5.24(f) to require that this ''conversion-out'' information be included in its application filed pursuant to § 5.23 or § 5.24. As a result, national banks and Federal savings associations will not have to file both a notice and an application for these transactions, as required by the current and proposed rule.

As discussed above, the applicable ''converting-in'' regulation (§ 5.24 or § 5.23) requires the institution to file an application with the OCC with respect to the ''converting-in'' aspect of the transaction.

Disposition of current Federal savings association conversion regulations. Sections 5.23 and 5.25 will replace most of the current Federal savings association regulations on conversions. Accordingly, the final rule removes §§ 143.8, 143.9, 143.10, 143.14, 152.18, and 152.19.[45] As proposed, the final rule also removes § 143.11, which provides for an organizational plan for governance during the first six years after a state mutual savings bank converts to a Federal charter. The OCC believes that the application process is sufficient for the OCC to monitor a the converting institution's compliance with the requirements for Federal mutual savings banks.

Section 143.12, which implements section 5(i)(4) of the HOLA,[46] addresses grandfathered authority of certain Federal savings associations. It is not a licensing regulation and does not involve an application process. The final rule leaves § 143.12 unchanged. As a result of other changes in this rulemaking, it will be the only section that remains in part 143. Therefore, the final rule renames part 143 as part 143—Federal Savings Associations—Grandfathered Authority.

Fiduciary Powers (§ 5.26)

Twelve CFR 5.26 contains the application requirements and processes for national banks' fiduciary powers. Twelve CFR part 150, subpart A (§§ 150.70 through 150.125) addresses the fiduciary powers application requirements and processes for Federal savings associations. We proposed to consolidate the application and notice filing procedures for fiduciary powers for national banks and Federal savings associations by revising § 5.26 to cover Federal savings associations, incorporating certain provisions from part 150 in § 5.26, amending § 150.70 to remove the current language regarding filing requirements, directing Federal savings associations to § 5.26 for the application and notice procedures they should follow, and deleting §§ 150.80 through 150.125, which contain additional current Federal savings association filing requirements. We received one comment on our fiduciary powers rule, discussed below. We are adopting the amendments to § 5.26 and part 150, subpart A as proposed.

In general, the final rule revises § 5.26 by adding language that makes it applicable to both national banks and Federal savings associations. The final rule also makes the following revisions to the application requirements in § 5.26.

First, the final rule adds § 5.26(e)(2)(iii) to provide examples of factors the OCC will consider when reviewing an application to exercise fiduciary powers. These factors include financial condition, adequacy of capital, character and ability of proposed trust management, the adequacy of any proposed business plan, and the needs of the community served. These factors help to clarify the standard of review the OCC will use. Three of the factors are requirements found in both the

[44] *See* 12 CFR 152.19 and 163.22(b)(2).

[45] This preamble discusses the removal of § 163.22(b)(1)(ii) and (b)(2) in the discussion of amendments to the OCC's rules regarding the organization of a national bank or Federal savings association and Federal savings association charters and bylaws, above. Other provisions of this rulemaking remove the remaining provisions of part 143 (except for § 143.12), part 152 and § 163.22.

[46] 12 U.S.C. 1464(i)(4).

National Bank Act [47] and the HOLA: [48] Capital adequacy, requiring that the needs of the community be served, and providing that the OCC may consider any other factors or circumstances that the agency considers proper. A review of the financial condition of the national bank or Federal savings association, the experience and character of the management of the institution, and the adequacy of any proposed business plan are all factors that the OCC already takes into account when reviewing an application submitted by a national bank or Federal savings association to conduct fiduciary powers. In addition, the Federal savings association rule, § 150.100, includes the factor requiring assessment of the financial condition, the overall performance, and the proposed supervision of the Federal savings association.

Second, the final rule adds a new paragraph (e)(5) to § 5.26. This paragraph requires a national bank or a Federal savings association that has not conducted previously approved fiduciary powers for 18 consecutive months to provide a notice to the OCC containing the information required by § 5.26(e)(2)(i) 60 days in advance of commencing the activities. This amendment is similar to a requirement for Federal savings associations at § 150.560, which requires filing a notice if the savings association has not conducted the fiduciary activity for five years after it was approved to engage in the activity. We have determined, however, that 18 months is a more appropriate timeframe for this notice because the management and condition of a national bank or Federal savings association may change in a shorter period of time. This amendment ensures that both a national bank and a Federal savings association previously granted fiduciary powers will still have the financial ability and managerial expertise necessary to conduct fiduciary activities in a safe and sound manner. The OCC also believes this notification is important because it will enable the agency to allocate supervisory resources to evaluate the institution when it resumes fiduciary activities in which it has not engaged for a long period of time.

Third, the final rule adds a new § 5.26(e)(1)(iv) that specifies that a national bank or Federal savings association that has received approval from the OCC to exercise limited fiduciary powers and would like to exercise full fiduciary powers must apply to the OCC. An applicant can apply for approval to offer limited services (authority for one or more specific type of fiduciary powers described in the application) or to offer full services (authority to exercise all powers authorized under the law). If an institution received prior approval to offer only certain services, it would need to file an application if it wished to begin offering other services. However, an institution that received approval to exercise full fiduciary powers could add to the activities in which it engages without additional application.

Finally, incorporating Federal savings associations in the application framework of § 5.26 also results in some other minor changes or clarifications of requirements for Federal savings associations. New paragraphs (b)(2) and (4) of § 5.26 set out circumstances in which a Federal savings association does not need to apply for fiduciary powers in connection with certain mergers. The new provision in § 5.26(e)(1)(iv), discussed above, requiring an application when an institution previously approved only to exercise specified limited powers planned to exercise more powers, replaces a current provision requiring a Federal savings association to apply if it planned to conduct fiduciary activities that are ''materially different'' from those previously approved, regardless of whether the prior approval had been for limited or full powers. Section 5.26(e)(3) provides for expedited review of applications by eligible national banks and eligible Federal savings associations. Part 150 does not provide for expedited treatment of fiduciary powers applications by Federal savings associations.

We received one comment with respect to fiduciary powers in response to our June EGRPRA notice. This comment requested that we amend the approval process in the existing Federal savings association rule, § 150.70(b), so that once the OCC has granted a Federal savings association permission to exercise some fiduciary powers, the association may exercise all fiduciary powers without further approval. The OCC disagrees with this commenter. The exercise of all fiduciary powers may raise safety and soundness concerns not associated with the exercise of limited fiduciary powers. Therefore, as described above, we are adopting the provision as proposed. We note that the change in standard of fiduciary activities ''materially different from previously approved'' in the current Federal savings association rule to the standard of limited powers to full powers in § 5.26 should reduce regulatory burden by lessening the need for a later filing.

Establishment, Acquisition, and Relocation of a Branch (§ 5.30 and § 5.31)

Overview. Section 5.30 of the OCC's rules addresses the establishment, acquisition, and relocation of national bank branch offices. Sections 145.92, 145.93, 145.95, and 145.96 address these subjects for Federal savings associations and also cover agency offices for Federal savings associations.[49] While these national bank and Federal savings association rules address a common subject there are two important differences between them, namely the definition of ''branch'' (and many provisions related to the definition) and the scope of the requirement for prior OCC approval.[50] These differences stem from the statutes applicable to national banks and Federal savings associations.

Specifically, with respect to national banks, the term ''branch'' is defined by statute. The McFadden Act defines a ''branch'' as an office ''at which deposits are received, or checks paid, or money lent.'' [51] Over the years, the meaning of the term in various contexts has been addressed extensively in case law and regulatory interpretation. The OCC codified much of that interpretive explanation in § 5.30 and in a number of provisions in part 7 that specify what constitutes a branching activity and what does not. For Federal savings associations, the HOLA does not have a general definition of ''branch.'' [52] Consideration of whether an office of a Federal savings association is a branch office has focused on activities involving deposit accounts, not lending. Furthermore, there is little in the regulations specifying which activities

[47] 12 U.S.C. 92a(i).

[48] 12 U.S.C. 1464(n)(8).

[49] An agency office is an office of a Federal savings association that services, originates, or approves loans and contracts; manages or sells real estate owned by the savings association; or conducts fiduciary activities or activities ancillary to the savings association's fiduciary business, or, with the approval of the OCC, provides other services. *See* 12 CFR 145.96.

[50] There are also differences in the locations at which a national bank or a Federal savings association may establish a branch. Generally, Federal savings associations have somewhat broader branching authority than national banks. The relevant application procedure regulations do not address this subject.

[51] Section 5155(j) of the Revised Statutes, 12 U.S.C. 36(j).

[52] There is a definition of ''branch'' in section 5(m) of the HOLA, 12 U.S.C. 1464(m), but it addresses branching only in the District of Columbia. In that subsection, branch is defined as an office ''at which accounts are opened or payments are received or withdrawals are made.'' 12 U.S.C. 1464(m)(2).

are branching activities and which are not.

In addition,the statutes authorizing a national bank to establish a branch require that it obtain approval from the OCC.[53] Accordingly, the OCC licensing regulations at 12 CFR 5.30 require national banks to file an application and obtain OCC approval for every branch. The HOLA does not have a general provision requiring approval for a Federal savings association to establish a branch.[54] By regulation, at § 145.93, the OCC (continuing a provision originally adopted by the OTS) requires an application for a Federal savings association to establish or relocate a branch, but this rule also provides certain exceptions.[55]

The proposal retained these differences between national banks and Federal savings associations. Specifically, we proposed to add a new § 5.31 to part 5 in order to bring the establishment and relocation of branches by a Federal savings association within the licensing procedures of part 5 and did not propose adding Federal savings associations to 12 CFR 5.30 New § 5.31 is similar in format to § 5.30, but includes provisions based on §§ 145.92 and 145.93 regarding the definition of ''branch'' and the scope of the application requirements. Section 5.31 also includes the provisions of § 145.96 regarding agency offices. As a result, national banks and Federal savings associations generally will continue to be subject to different branching application provisions and requirements.

The preamble to the proposed rule also requested comment on two alternatives to the proposed rule's treatment of branching by Federal savings associations. The first alternative required Federal savings associations to file applications to establish or relocate a branch without exceptions. This alternative would harmonize the treatment of the branch licensing regulations of national banks and Federal savings associations in order to simplify our licensing procedures and provide for comparable treatment of national banks and Federal savings associations. The second alternative approach required Federal savings associations to file an after-the-fact notice instead of an application in cases where an application was not required. Such a notice would enable the OCC to obtain timely information on Federal savings association branching activity without requiring eligible Federal savings association to obtain prior OCC approval to engage in an activity that they now may do without approval.

We also proposed several minor substantive clarifications in § 5.30.

We adopt § 5.30 as proposed. We also adopt § 5.31 as proposed with the addition of the second alternative outlined above. We received one comment letter on this branching proposal and the alternatives. This comment is discussed below. Also as proposed, the final rule removes 12 CFR 145.93, 145.95 and 145.96, and makes a conforming change to § 145.92.

Branches of national banks (§ 5.30). The final rule revises § 5.30(c), the scope section. Section 5.30(c)(2) (formerly part of § 5.30(c)) continues to provide that the standards of § 5.30 (governing review and approval of applications by the OCC) and, as applicable, 12 U.S.C. 36(b), applies to branches established as a result of a business combination approved under § 5.33. The final rule adds branches acquired or retained in a conversion approved under § 5.24 to the scope of § 5.30, while maintaining the application procedures set forth in § 5.24 for these transactions. The addition of branches acquired or retained in a conversion under § 5.24 to this section reflects current practice.

The final rule also revises the definition of ''branch.'' Section 5.30(d)(1)(ii)(B) currently excepts from the definition of ''branch'' a facility that is located at the site of, or is an extension of, an approved main office or branch office of the national bank. The final rule amends this paragraph to state that the OCC will consider a drive-in or pedestrian facility located within 500 feet of a public entrance to an existing main office or branch office to be such an extension, provided the functions performed at the drive-in or pedestrian facility are limited to functions ordinarily performed at a teller window. This ''bright-line'' 500-foot test for national banks is consistent with § 145.93(b)(1), which provides this exception for Federal savings associations. The final rule also adds new § 5.30(d)(1)(iii) to describe more clearly what is not a branch, including ATMs and remote service units,[56] as well as loan production offices, deposit production offices, administrative offices, and any other office that does not engage in any of the activities set out in paragraph (d)(1).

In addition, the final rule updates § 5.30(e), relating to the principles that guide the OCC in making determinations on applications under this section, to reflect the OCC's statutory mission as amended in section 314 of the Dodd-Frank Act.[57]

Finally, the final rule amends § 5.30(f)(6), which sets forth the procedures for expedited review of applications by eligible national banks. This change clarifies that the time period for review of an application for a short-distance relocation is the 15th day after the close of the comment period or the 30th day after the filing is received by the OCC, whichever is later. This period is consistent with the shorter comment period for applications for short-distance relocations (15 days rather than the standard 30 days).

Branches and agency offices of Federal savings associations (§ 5.31). As indicated above, new § 5.31 addresses the establishment or relocation of branches, or the establishment of agency offices, by Federal savings associations. Its format follows that of § 5.30, but it does not include provisions from § 5.30 that apply only to national banks.

The OCC received one comment on proposed § 5.31. This commenter stated that the OCC should retain the different branching rules for national banks and Federal savings associations, as proposed, and strongly supported this approach over the first alternative described in the preamble, which would require both national banks and Federal savings associations to file an application to establish or relocate a branch. With respect to this first alternative, the commenter noted that an application requirement would impose an unnecessary regulatory burden on Federal savings associations by making their branching decisions subject to prior OCC approval and by requiring Federal savings associations to adapt to the extensive case law and regulatory history associated with the meaning of ''branch.'' Finally, this commenter noted that implementing this alternative would reverse a burden reducing measure adopted as a result of the last EGRPRA review at the same time that the OCC is seeking further burden reducing measures in its second EGRPRA review.

[53] *See* 12 U.S.C. 36(b), 36(c), 36(g).

[54] However, the provision regarding branching in the District of Columbia does require prior regulatory approval. 12 U.S.C. 1464(m)(1).

[55] As part of the OCC's EGRPRA review, the OCC will consider whether to recommend to Congress a statutory change to make the requirements for establishing or relocating a branch consistent for national banks and Federal savings associations.

[56] The final rule also amends § 7.4003 (establishment and operation of a remote service unit) to add a number of additional examples of remote service units. The rule expands this illustrative list in order to modernize the regulation to capture new technology with similar functional capability.

[57] 12 U.S.C. 1(a).

The OCC has decided not to adopt the first alternative but to adopt the second alternative that requires the filing of an after-the-fact notice. This notice will enable the OCC to obtain timely information on Federal savings association branching activity without imposing significant regulatory burden. Specifically, an after-the fact notice will strengthen the OCC's ability to monitor savings association branching activity and will enable the OCC to maintain comprehensive supervisory and structural data for Federal savings associations. We note that we received no comments on this after-the-fact notice alternative.

Section 5.31 as adopted by this final rule, and its differences with the current Federal savings association branching rule, are described below.

Section 5.31(a) recites the statutory authority for the rule. Section 5.31(b) sets out the basic requirement that a Federal savings association must file an application to establish or relocate a branch, unless the transaction qualifies for one of the exceptions in the rule.

Section 5.31(c), the scope section, generally describes what the section covers—namely, the procedures and standards for review and approval of applications to establish or relocate a branch, the circumstances in which an application is not required, and the authority to establish agency offices. Section 5.31(c)(2) (similar to § 5.30(c)(2) as amended by this final rule) provides that the standards of § 5.31 (governing review and approval of applications by the OCC) apply to branches acquired or retained in a conversion approved under § 5.23 or a business combination approved under § 5.33, but that such branches are subject only to the application procedures set forth in §§ 5.23 or 5.33. Section 5.31(c)(3) states that § 5.31 also implements section 5(m) of the HOLA,[58] which addresses branching by Federal and state savings associations in the District of Columbia.

Section 5.31(d) adds a definition of ''branch office'' for Federal savings associations for purposes of § 5.31 by referring to the definition in 12 CFR 145.92(a). The final rule also includes a definition of ''home state''—the state in which the association's home office is located.

Section 5.31(e) sets forth the policy principles that guide the OCC's review of an application to establish or relocate a branch. These principles reflect the OCC's statutory mission as amended in section 314 of the Dodd-Frank Act, and are identical to those principles set forth in § 5.30(e) for the OCC's review of a national bank branch application or relocation.[59]

Paragraph (f)(1) of § 5.31 requires each Federal savings association to submit a separate application to establish or relocate a branch, unless the transaction qualifies for an exception in paragraph (f)(2). Sections 145.93 and 145.95 contain a number of provisions regarding the filing of notices and applications with the OCC as well as notices to the public. These provisions are no longer necessary once Federal savings association branch filings are subject to part 5. Paragraph (e) of § 145.93 does not have a corresponding provision in § 5.30, and the OCC is not including it in § 5.31. Under § 145.93(e), a Federal savings association may not file an application or notice, or use any of the exceptions, to establish a branch if the association has filed an application to merge or otherwise surrender its charter and the application has been pending for less than six months.

Paragraph (f)(2) of § 5.31 incorporates three of the exceptions from § 145.93(b) to the requirement to file an application: (1) The exception for the establishment of a drive-in or pedestrian office that is located within 500 feet of an existing home or branch office, (2) the exception for a short-distance relocation of a branch, and (3) the exception for the establishment or relocation of a branch by highly rated Federal savings associations.[60]

Under this third exception in § 145.93(b)(3), a highly rated Federal savings association is not required to file an application to change the permanent location of an existing branch or to establish a new branch if it meets certain requirements. Those requirements are: (1) The Federal savings association is eligible for expedited treatment, (2) it publishes notice, at a time period specified in the rule, of its intent to establish or relocate a branch, (3) in the case of a relocation, it posts notice of its intent to relocate the branch at the existing branch, and (4) no person files a comment opposing the action, or if a comment is filed, the OCC determines the comment raises issues that are not relevant to the standards for approving a branch application.

The final rule continues these qualifying requirements with the following differences. First, as with other sections in part 5, the condition for qualifying is that the Federal savings association is an ''eligible savings association'' rather than eligible for expedited treatment. As discussed earlier in this preamble, there are some differences in these tests. Second, the application exceptions in § 5.31(f)(2) do not apply in the context of section 5(m) of the HOLA, described below in the discussion of § 5.31(j).

Section 5.31(f)(3) requires that highly rated Federal savings associations not required to file a branch application must file a notice with the OCC within 10 days after the opening of the branch. This notice must include the date the bank established or relocated the branch and the address of the branch. As indicated above, this is a new requirement for Federal savings associations.

Paragraph (d) of § 145.93 provides that the bank may retain such branches after a conversion or combination unless the transaction approval specifies otherwise. The final rule does not retain this provision in § 5.31. Instead, the final rule addresses the retention of branches in a conversion or business combination in the conversion and business combination regulations (in this final rule, § 5.23 for conversions to become a Federal savings association and § 5.33 for business combinations resulting in a Federal savings association).

Paragraph (g) of § 5.31 sets out exceptions to the rules of general applicability for applications by a Federal savings association to establish or relocate a branch. Specifically, the OCC may waive or reduce the public notice and comment period in certain emergency situations or with respect to certain temporary branches.

Paragraph (h) of § 5.31 provides that the OCC's approval of a branch expires if the branch has not commenced business within 18 months, unless the OCC grants an extension. This period is longer than the current 12-month expiration period for branch approvals for Federal savings associations under § 145.95(c).

Paragraph (i) of § 5.31 provides that Federal savings associations must comply with the portions of 12 U.S.C. 1831r–1 that apply to Federal savings associations with respect to branch closings.

[58] *See* 12 U.S.C. 1464(m).

[59] 12 U.S.C. 1(a).

[60] The final rule replaces the fourth exception (which provides that a Federal savings association may re-designate an existing branch office as a home office at the same time that it re-designates its existing home office as a branch office) with provisions in § 5.40. Section 5.40 governs changes in the locations of a national bank's main office or a Federal savings association's home office. Changes in the location of a home office, including to an existing branch office, are subject to § 5.40. If the Federal savings association proposes to establish a branch at its former home office location, paragraph (c)(3) of § 5.40 directs the association to follow § 5.31.

Section 5.31(j) implements section 5(m)(1) of the HOLA.[61] Section 5(m)(1), which applies to both Federal and state savings associations, provides that no savings association incorporated under the laws of the District of Columbia or organized in the District or doing business in the District shall establish any branch or move its principal office or any branch without the Comptroller's prior written approval and that no savings association shall establish any branch in the District or move its principal office or any branch in the District without the Comptroller's prior written approval. Section 145.93(c) currently provides prior approval for any savings association branch that would be subject to section 5(m)(1), if the association meets the requirements of § 145.93(b) for an exception to the branch application filing requirement. As indicated in the preamble to the proposed rule, the OCC believes requiring an application and issuing a prior written approval for each application is more consistent with the statutory language of section 5(m)(1). Accordingly, the final rule amends the provisions implementing section 5(m)(1) of the HOLA to require an application. The rule provides a short paraphrase of the statutory provision and instructs savings associations requiring approval under section 5(m)(1) to follow the application procedures of 12 CFR 5.31.

Finally, paragraph (k) to § 5.31 includes provisions currently in § 145.96 regarding agency offices.

We note that the comment letter we received on the branching proposal asked the OCC to clarify that mobile phones and similar devices are not branches. With respect to national banks, if the mobile phone or similar device belongs to the customer, then it is not a facility established by the bank. If the mobile phone or similar device is owned or controlled by the bank, then it would be a remote service unit, and therefore not a branch pursuant to 12 U.S.C. 36(j) and 12 CFR 7.4003. Moreover, the final rule at § 5.30(d)(1)(iii) implicitly addresses this point by including ''personal computer'' as an example of a remote service unit.

With respect to Federal savings associations, a mobile phone is an ''electronic means or facility'' pursuant to current § 155.200 and excluded from the definition of branch under current § 145.92, as incorporated in proposed § 5.31.

[61] 12 U.S.C. 1464(m)(1).

Expedited procedures for certain reorganizations (§ 5.32)

Twelve CFR 5.32 provides the procedures for OCC review and approval of a national bank's reorganization to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company. Section 5.32 currently does not expressly exempt such reorganizations from the general procedures in part 5 for public notice, public availability, and hearings and other meetings (§§ 5.8, 5.9, and 5.11). When originally adopted, it was not the OCC's intent to apply these procedures to these reorganizations, and, in general, the OCC has not required national banks to comply with these procedures. The OCC proposed to amend § 5.32 to make clear in the regulation that these procedural requirements do not apply unless the OCC concludes that an application presents significant and novel policy, supervisory, or other legal issues. This approach is consistent with procedural exceptions for conversions (§ 5.24), fiduciary powers (§ 5.26), operating subsidiaries (§ 5.34), bank service companies (§ 5.35), and change in asset composition (§ 5.53). The OCC did not receive any comments related to § 5.32, and we adopt it as proposed.

Business Combinations (§ 5.33)

Business combinations include mergers and consolidations, as well as certain purchase and assumption transactions. The OCC's regulations governing the application requirements and procedures for national banks engaging in business combinations are contained in 12 CFR 5.33. The regulations governing the application requirements and procedures for Federal savings associations engaging in business combinations are contained in 12 CFR 163.22. The statutes governing mergers and consolidations by national banks contain extensive specifications for their authority, the procedures the bank must follow, and the effect of the merger or consolidation.[62] Thus, there are few OCC regulations on these matters. By contrast, the statutes governing mergers and consolidations by Federal savings associations contain few provisions addressing these matters.[63] Accordingly, the OCC (and its predecessor regulators of Federal savings associations) has adopted extensive regulations addressing the authority of Federal savings associations to engage in mergers and consolidations, the procedures the savings association must follow, and the effect of the merger or consolidation. These rules are contained in 12 CFR part 146 for Federal mutual savings associations and in 12 CFR 152.13, 152.14, and 152.15 for Federal stock savings associations.

While these rules address a common subject, there are a number of differences between them. We proposed to harmonize the treatment of the business combination activities of national banks and Federal savings associations where consistent with underlying statutory authorities, to consolidate our regulations by amending 12 CFR 5.33 to apply to Federal savings associations, and to remove 12 CFR part 146 and 12 CFR 152.13, 152.14, 152.15, and 163.22.[64] These changes are intended to reduce regulatory duplication and promote fairness in supervision. We also proposed to include in § 5.33 some provisions from the Federal savings association application requirements and procedures, to make several other substantive changes in § 5.33, and to make a number of clarifying or technical amendments. As explained below, the OCC proposed to subject national banks and Federal savings associations to the same application requirements and procedures. In addition, we proposed to add to § 5.33 new paragraphs, based on 12 CFR part 146 and 12 CFR 152.13 and 152.14, that would continue to provide regulations addressing the authority of Federal savings associations to engage in mergers and consolidations, describe the procedures the savings association must follow, and explain the effect of the merger or consolidation.

We received three comment letters addressing proposed § 5.33. These comment letters and revised § 5.33 are discussed below.

Scope. The final rule modifies the scope section, § 5.33(b), to remove the reference to a merger between a national bank and its nonbank affiliate because those transactions are now covered in the revised definition of ''business combination,'' discussed below. The final rule also revises the language regarding notices to the OCC relating to when a national bank or Federal savings association is not the resulting institution to address situations in which the merger is with an entity that is not a ''depository institution'' as defined for purposes of § 5.33.[65] In addition, the final rule adds a footnote to the licensing requirements section

[62] *See* 12 U.S.C. 214–214d, 215–215b, and 215c, respectively.

[63] *See* 12 U.S.C. 1464(d)(3)(A) and 1467a(s).

[64] The removal of part 146 and § 163.22 also is discussed elsewhere in this preamble.

[65] Under § 5.3(f), ''depository institution'' means any bank or savings association.

indicating that some of the transactions that do not require an application under § 5.33 may require an application under 12 CFR 5.53 for a substantial asset change.

Definitions. Section 5.33(d) contains definitions. The final rule revises and reorganizes the definition of ''business combination,'' § 5.33(d)(2), in several ways. First, § 5.33(d)(2)(i) now includes consolidations and mergers of Federal savings associations with state trust companies. Second, new § 5.33(d)(2)(ii) includes mergers and consolidations between a Federal savings association and a credit union in the definition of business combinations. Federal savings associations have authority to engage in these transactions under certain circumstances but national banks do not. Third, new § 5.33(d)(2)(iii) includes the provision in the current definition regarding mergers between a national bank and its nonbank affiliates. National banks have this merger authority, but Federal savings associations do not.

Fourth, new § 5.33(d)(2)(v) revises an existing provision in § 5.33(d)(2), which currently includes in the definition of business combination only the assumption of deposit liabilities from another depository institution, to also include the assumption, from a credit union or any other institution that is not FDIC-insured, of deposit accounts or other liabilities that will become deposits at the assuming national bank or Federal savings association. Section 163.22(c) requires an application by a Federal savings association in such cases.[66] The final rule keeps this requirement and extends it to national banks. This requirement will assist the OCC in monitoring acquisitions of deposit liabilities from outside the FDIC-insured system.

Fifth, the final rule includes the new term ''other combination'' in § 5.33(d)(10) to describe the following combinations that do not require application to the OCC under § 5.33: (1) mergers or consolidations where a national bank or Federal savings association is not the resulting institution; (2) the transfer of deposit liabilities by a national bank or Federal savings association to another insured depository institution, a credit union, or any other institution; and (3) acquisitions by a national bank or Federal savings association of all, or substantially all, of the assets or liabilities of any company not an insured depository institution (whole entity purchase and assumption transactions).

Currently, a Federal savings association has authority to engage in whole entity purchase and assumption transactions only with an entity with which it could engage in a consolidation or merger. These entities do not include a nonbank affiliate or other company. When a Federal savings association is permitted to engage in such transactions, it is required to file an application. A national bank has authority to engage in a whole entity purchase and assumption transaction without regard for whether it has the authority to consolidate or merge with the counterparty. The purchase and assumption of bank-permissible assets and liabilities is an exercise of a bank's power to engage in the business of banking under 12 U.S.C. 24(Seventh), not the power to combine organically with another institution, as in a merger. As proposed, the final rule adopts the same position regarding the power of a Federal savings association to engage in purchase and assumption transactions. Thus, a Federal savings association will have the authority to engage in a whole entity purchase and assumption without regard to whether it has authority to consolidate or merge with the counterparty because such transactions are included in the final rule at § 5.33(n)(2).

While national banks currently have this whole entity purchase and assumption authority, they are not required to apply to the OCC for approval unless it is a whole entity purchase and assumption with a depository institution. The proposed rule required an application for both national banks and Federal savings associations for a whole entity purchase and assumption that would result in a 25 percent or more increase in the asset size of the bank or savings association. We included this provision in the business combination rule because these transactions are similar to a merger. One commenter opposed this new application requirement, stating that the requirement is not connected to the integration of national banks and Federal savings association rules. We note, however, that Federal savings associations in current § 163.22(c) are subject to an application requirement for the purchase or sale in bulk not in the ordinary course of business. However, upon further consideration, we have amended this provision to streamline our rules. Because whole entity purchase and assumption transactions meeting the 25 percent asset size threshold may be subject to an application requirement under revised § 5.53(c)(1)(iii) as a substantial asset change, we find that the application requirement in § 5.33 for such transactions is not necessary. We therefore have removed these transactions from § 5.33 in the final rule by removing whole entity purchase and assumption transactions that result in a 25 percent or more increase in asset size from the definition of ''business combination'' in § 5.33(d)(2) and removing the asset size qualification from § 5.33(d)(10)(iv).

The OCC also is adding definitions of ''credit union,'' ''savings association,'' ''state savings association,'' and ''state trust company'' in § 5.33(d)(6), (11), and (12), respectively. In addition, the final rule is revising the definition of ''home state'' included in the proposed rule to remove references to savings associations, as this term is only used with respect to national banks in § 5.33.

Policy factors. The final rule expressly adds to § 5.33(e)(1), in new paragraph (i), the general factors the OCC uses to evaluate all business combination applications, including both those the OCC reviews under the Bank Merger Act and those the OCC does not. These factors are: (1) the institution's capital level; (2) the conformity of the transaction to applicable law, regulation, and supervisory policies; (3) the purpose of the transaction; (4) the impact of the transaction on safety and soundness; and (5) the effect of the transaction on the institution's shareholders (or members in the case of a mutual savings association), depositors, other creditors, and customers. These factors all reflect current practice. Some of these factors are included in § 5.33(g)(4) and (5) now for a merger with a nonbank affiliate, in which the OCC does not review the transaction under the Bank Merger Act. Other factors are included in the Federal savings association regulations at § 163.22(d). Section 163.22(d)(1)(vi) also has factors relating to the fairness of and disclosure concerning the transaction and includes a detailed presentation of considerations involved in assessing the factor. The OCC believes it is not necessary to include this detailed material in the regulation. We believe the factor in § 5.33(e)(1)(i)(E) regarding the effect of the transaction on the institution's shareholders,(or members in the case of a mutual savings association), depositors, other creditors, and customers is sufficient to provide a basis to review such matters in appropriate cases.

The final rule includes three additional factors in § 5.33(e)(1)(ii) for applications in which the OCC reviews the transaction under the Bank Merger Act. First, the rule moves the money

[66] Section 163.22(c) also is discussed elsewhere in this preamble in connection with 12 CFR 5.53.

laundering factor included in current § 5.33(e)(1)(iii) to the Bank Merger Act paragraph because it is a factor in the Bank Merger Act. The rule adds factors relating to financial stability and deposit concentration limit because the Dodd-Frank Act added these factors to the Bank Merger Act.[67]

As in the current rule, proposed § 5.33(e)(1)(iii) provides that, when the OCC evaluates an application for a business combination under the CRA, the OCC also considers the performance of the applicant and the other depository institutions involved in the business combination in helping to meet the credit needs of the relevant communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices. One commenter recommended that the OCC require banks to demonstrate a record of strong community development and that this requirement should go beyond demonstrating a Satisfactory rating or above on the most recent CRA exam. This commenter also recommended that the OCC require banks to demonstrate a clear public benefit to both the current and expanded assessment areas, together with a formal CRA agreement with the local communities. The OCC declines to accept these recommendations. The commenter's proposed standards of a record of strong community development and clear public benefit are more stringent than the statutory requirement under the CRA. They are also different than the convenience and needs factor under the Bank Merger Act, 12 U.S.C. 1828(c)(5).

Another commenter stated that, in considering office closings in their assessment of the convenience and needs and CRA factors as part of a merger application review, the Federal banking agencies should recognize technological advancements that have led consumers to make greater use of alternative means to obtain products and services, including the use of mobile phones. The commenter states that the agencies should balance the consideration of office closings with consideration of an institution's use of alternative technologies that serve the public. We agree that an office closing does not necessarily result in a negative impact on service to the community given the increased use of alternate systems for delivering retail banking services. In assessing the probable effects of the business combination on the convenience and needs of the community to be served, the OCC would consider alternative systems for delivering retail banking services to the extent that the alternative delivery systems are available and effective in providing financial services to low- and moderate-income geographies and individuals. Furthermore, one reason the OCC's review of a merger application focuses on office closings is because of the branch closing procedural requirements of 12 U.S.C. 1831r–1. We therefore decline to make any change to our regulations on this point.

The final rule also clarifies the information the applicant must include in its application. Section 5.33(e)(2) currently requires an applicant to disclose the location of any branch it will acquire and retain in a business combination. The final rule provides that this disclosure include the location of any branches that are approved but not yet opened. Revised § 5.33(e)(3) adds a financial subsidiary investment, bank service company investment, service corporation investment, and other equity investment to the current requirement to identify subsidiaries and provide an analysis of the permissibility for the national bank or Federal savings association to hold the subsidiary or investment. This requirement reflects the current practice of the OCC to review the legal permissibility for the resulting national bank or Federal savings association to continue to hold these other investments when evaluating a business combination application.

In addition, the final rule adds Federal savings associations to the provision in § 5.33(e)(5) that allows banks to retain nonconforming assets for a limited period of time after consummation of a business combination. The final rule also adds a new paragraph (e)(5)(ii) applicable to Federal savings associations to address provisions in the HOLA regarding certain nonconforming assets.

In the provision regarding the exercise of fiduciary powers by the resulting national bank or Federal savings association, § 5.33(e)(6), the final rule adds a new paragraph (e)(6)(ii) to clarify that if the applicant intends to exercise fiduciary powers after the combination and requires OCC approval for such powers, it must include in the business combination application the information required in § 5.26 for a request for fiduciary powers. This requirement reflects current practice.

In the provision regarding the expiration of approval, § 5.33(e)(7), the final rule shortens the time an approval expires if the transaction has not been consummated from one year to six months, and adds a provision under which the OCC can extend the six-month period.

Exceptions to rules of general procedure. Section 5.33(f) contains the exceptions to the rules of general applicability for filings under § 5.33. Paragraph (f)(1) addresses filings in which a national bank (and, as revised, a Federal savings association) is the applicant. The final rule amends paragraph (f)(1) to clarify that the requirement of public notice and comment apply only when the application is subject to a public notice requirement under the Bank Merger Act or other applicable statute that requires notice to the public. In such cases, the statutory requirements apply. In other cases, the public notice and comment provisions in §§ 5.8, 5.10, and 5.11 do not apply unless the OCC concludes a particular application presents significant or novel policy, supervisory, or legal issues.[68] Applying this provision to Federal savings associations results in a change for Federal savings associations with respect to the frequency and timing of publication for transactions that are subject to the Bank Merger Act. Section 163.22(e)(1)(i) requires an initial publication in a newspaper and then publication on a weekly basis during the public comment period. For national banks, the OCC requires an initial newspaper publication and two subsequent publications at intervals during the standard 30-day public comment period, as provided in the Comptroller's Licensing Manual.

One commenter requested that we allow other forms of public notice of proposed transactions in addition to the newspaper notice required by 12 U.S.C. 1828(c)(3)(D), such as notice on an institution's Web site, and specifically requested that the OCC endorse a statutory amendment to the Bank Merger Act that permits alternative forms of public notice. We note that providing additional alternative forms of notice does not require a change in the law or our rules. An institution may provide notice on its Web site on its own initiative if it so chooses and thereby provide for increased notice opportunities to the public. With

[67] Pub. L. 111–203, sections 604(f) and 623(a), 124 Stat. 1376, 1602, and 1634 (2010).

[68] Section 5.33(f) currently includes a list of several other statutory or regulatory requirements for publication in connection with certain mergers or consolidations that also except those transactions from the one-time publication of notice requirement of § 5.8(a). However, those provisions concern publication of notice of the shareholders' meeting being called to vote on the proposed merger or consolidation. They are not notices to the public inviting comment on the merger or consolidation application. Accordingly, the OCC is removing these referenced provisions in revised § 5.33(f)(1)(i).

respect to the requested statutory change, we believe that replacing the newspaper publication with alternative means could reduce the availability of the notice to the public. However, we will continue to review this proposal as we review other EGRPRA requests for statutory changes.

Paragraph (f)(1)(ii) continues the current provisions under which a merger between a national bank and its nonbank affiliate is excepted from public notice and comment. Such mergers are merely internal reorganizations of the entities' existing operations.

Section 5.33(f)(3) addresses filings in which a national bank (and as revised, a Federal savings association) is the target company and will not be the resulting institution. The final rule clarifies this provision so that it no longer includes a Federal savings association as a resulting institution, as Federal savings associations now apply to the OCC under revised § 5.33(g)(3). The final rule also adds credit unions to this section because a merger or consolidation of a Federal savings association into a credit union may now be within the scope of § 5.33. In addition, the final rule removes §§ 5.2 (rules of general applicability) and 5.5 (fees) from the list of sections that do not apply to § 5.33(g)(6) and (g)(7), as they include general provisions that may be useful to apply in some situations.

Provisions governing consolidations and mergers of a national bank with other national banks and state banks. The final rule amends § 5.33(g)(1) (merger or consolidation of a national bank or a state bank into a national bank) to require that a national bank that will not be the resulting bank in a merger or consolidation with another national bank must file a notice to the OCC under § 5.33(k). This notice, which also is required whenever a national bank or Federal savings association merges or consolidates into another institution, provides the OCC information about the target national bank's compliance with requirements to combine into another bank, and describes the steps for the national bank to end its separate existence. Section 5.33(k) is discussed further below.

The final rule amends § 5.33(g)(2) (merger or consolidation of a Federal savings association into a national bank) to reflect that the OCC now is the regulator of Federal savings associations. First, § 5.33(g)(2)(i)(B) includes requirements similar to those in 12 CFR part 146 and 12 CFR 152.13 and 163.22 (by referring to § 5.33(n) and (o)). In addition, § 5.33(g)(2)(i)(B) includes a provision under which a whole purchase and assumption of the target Federal savings association is treated as a consolidation for the Federal savings association, thus applying the procedural requirements in paragraph (o). The current regulations, at 12 CFR part 146 and 12 CFR 152.13, apply these requirements to these transactions through the definition of ''combination'' in § 152.13(b)(1), which includes a whole purchase and assumption transaction between depository institutions.

Second, because the OCC now has regulatory authority over both the national bank and the Federal savings association, the final rule amends the provision in § 5.33(g)(2)(ii), which currently provides that the OCC may conduct an appraisal of dissenters' shares of stock in a national bank involved in a consolidation with a Federal savings association if all the parties agree, to require that the OCC conduct this appraisal. The final rule also redesignates this provision as § 5.33(g)(2)(ii)(C).

Third, the final rule adds new § 5.33(g)(2)(ii)(A) and (B) to set out the process for appraisal of dissenters' shares of stock in a Federal stock savings association involved in a consolidation with or merger into a national bank. Consolidations and mergers of national and state banks into a national bank are governed by 12 U.S.C. 215 and 215a. These statutes include provisions on dissenters' rights. Consolidations and mergers of Federal savings associations into national banks are authorized under 12 U.S.C. 215c, but the statute has no provisions addressing dissenters' rights. Applications in which there are dissenting shareholders and the appraisal process is used are rare. The basic frameworks of the national bank and Federal savings association processes in the current rules are similar. In the interest of simplicity of administration and similar treatment for each type of institution, the OCC prefers to use only one dissenters' rights process. Because the process governing national bank dissenters' rights included in current § 5.33 for national banks is required by 12 U.S.C. 215 and 215a, the final rule applies this process to transactions in which a Federal savings association is merging or consolidating into a national bank rather than continuing the regulatory dissenters' rights provision in 12 CFR 152.14. However, the final rule makes one change to this process. Under the statutes, the bank is required to bear all costs.[69] Under § 152.14(c)(9), the OCC may apportion costs. For transactions in which the process for dissenters' rights is not governed by statute, such as transactions governed by § 5.33(g)(2)(ii)(C), the final rule includes the authority for the OCC to apportion costs among the parties for both participating Federal savings associations and participating national banks.

Section 5.33(g)(2)(iii) includes a requirement that the consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution. This requirement is based on provisions in §§ 146.2(b)(9) and 152.13(f)(9). Although not currently in § 5.33, it is a requirement for national banks as discussed in the Comptroller's Licensing Manual.

New § 5.33(g)(3) addresses consolidations and mergers of other institutions into a Federal savings association.[70] This section requires application to the OCC and, in § 5.33(g)(3)(i)(A) (referring to § 5.33(n) and (o)), requires the Federal savings association to comply with requirements and procedures similar to those in 12 CFR part 146 and 12 CFR 152.13 and 163.22. Section 5.33(g)(3)(i)(A) also provides that if a combination involves a whole purchase and assumption of a Federal savings association, then the combination is be treated as a consolidation for participating Federal savings associations and the procedural requirements in paragraph (o) will apply. As discussed above, the current regulations, at 12 CFR part 146 and 12 CFR 152.13, apply these requirements to such transactions through the definition of ''combination'' in § 152.13(b)(1), which includes a whole purchase and assumption transaction between depository institutions.

Section 5.33(g)(3)(i)(B)(*1*) continues the provisions in current § 5.33(g)(3)(iii)(A) by requiring a target national bank to follow the procedures of 12 U.S.C. 214a and 12 U.S.C. 214c, as if the Federal savings association were a state bank. Section 5.33(g)(3)(i)(B)(*2*) continues the provisions in current § 5.33(g)(3)(iii)(B), under which the OCC may conduct an appraisal of dissenters' shares of stock

[69] *See* 12 U.S.C. 214a(b), 215(d), and 215a(d).

[70] The final rule redesignates the provisions in current § 5.33(g)(3) that address a consolidation or merger of a national bank into a state chartered depository institution as § 5.33(g)(6). The provisions in current § 5.33(g)(3) that address a consolidation or merger of a national bank into a Federal savings association remain here in new § 5.33(g)(3) with modifications, as discussed in the text.

in a target national bank involved in a merger or consolidation with a Federal savings association if all the parties agree. However, the final rule makes the appraisal of dissenters' rights in § 5.33(g)(3)(i)(B)(*2*) a required process because the OCC now has regulatory authority over both the national bank and the Federal savings association involved in the transaction. As discussed above, because we are applying this process by regulation to types of transactions that do not have statutory dissenters' rights provisions, the final rule includes the authority of the OCC to apportion appraisal costs between the institution and dissenters.

Section 5.33(g)(3)(i)(C) sets out the process for appraisal of dissenters' shares of stock in a Federal stock savings association involved in a consolidation or merger into another Federal savings association. In applications in which a Federal savings association is merging into another Federal savings association, the final rule applies the statutory provisions governing national bank dissenters' rights in 12 U.S.C. 214a to Federal savings associations, as if the Federal savings association were a national bank merging into a state bank under section 214a. We are using the national bank dissenters' right process rather than continuing the regulatory dissenters' rights provision in 12 CFR 152.14 for the reasons discussed above. As above, because the process is being applied in these situations by regulation, not statute, the final rule includes a cost allocation provision. The final rule also includes the requirement from 12 U.S.C. 214a(b) that the plan of merger or consolidation must provide the manner of disposing of the shares of the resulting Federal savings association not taken by the dissenting shareholders. This requirement is a change from § 152.14(c)(11), under which such shares shall have the status of authorized and unissued shares of the resulting association. The plan of merger or consolidation could still provide such status for these shares, but such status is no longer mandatory.

Section 5.33(g)(3)(i)(D) provides that a state bank, state savings association or credit union that engages in a consolidation or merger into a Federal savings association follows the procedures and dissenters' rights process set out for such transactions in the law of the state or other jurisdiction under which it is organized. This provision is similar to the current provisions in § 5.33(g)(4) and (g)(5) for mergers between a national bank and its nonbank affiliate.

Section 5.33(g)(3)(ii) includes a requirement that the consolidation or merger agreement must address the effect upon and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution. This requirement is based on provisions in §§ 146.2(b)(9) and 152.13(f)(9). Although not currently in § 5.33, it is a requirement for national banks as discussed in the Comptroller's Licensing Manual.

Sections 5.33(g)(4) and (g)(5) address mergers between a national bank and its nonbank subsidiary or affiliate. Section 5.33(g)(4) covers mergers into the national bank; § 5.33(g)(5) covers mergers into the nonbank subsidiary or affiliate. They implement a statute applicable only to national banks, not Federal savings associations.[71] The final rule amends § 5.33(g)(4), to clarify that the transaction is subject to review by the FDIC under the Bank Merger Act only when the national bank is insured. The final rule also removes the factors the OCC considers in reviewing these applications from § 5.33(g)(4)(i) and (g)(5)(i). These factors no longer are needed in these provisions because the final rule adds them to § 5.33(e)(1)(i) and applies them to all business combinations.

Section 5.33(g)(6) addresses a consolidation or merger under 12 U.S.C. 214a of a national bank with a state bank resulting in a state bank (as defined in 12 U.S.C. 214(a)). This new paragraph is based on the portions of current § 5.33(g)(3) that address a consolidation or merger of a national bank into a state bank.[72] The final rule also adds express provisions on procedures and dissenters' rights. These requirements are statutory and were implied in current § 5.33(g)(3)(i). The final rule moves the provisions on termination of charter and notice to the OCC in current § 5.33(g)(3)(i) and (ii) to new § 5.33(k). In § 5.33(g)(6)(iv), the final rule includes a requirement that the consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution. This requirement is based on provisions in §§ 146.2(b)(9) and 152.13(f)(9). Although not currently in § 5.33, it is a requirement for national banks as discussed in the Comptroller's Licensing Manual.

The final rule adds a new § 5.33(g)(7), similar to proposed § 5.33(g)(6), to address a consolidation or merger of a Federal savings association into a state bank, state savings bank, state savings association, state trust company, or credit union. Under § 5.33(g)(7)(i), such transactions, where permissible, require only a notice to the OCC, not application and approval. This requirement is a change for Federal savings associations because, under § 163.22(c), an application is required for a combination with an uninsured bank, savings association or trust company or a credit union. Section 5.33(g)(7)(ii) addresses the procedures Federal savings association must follow to engage in the consolidation or merger and requires the association to follow the provisions of § 5.33(n) and (o), which are based on provisions in 12 CFR part 146 and 12 CFR 152.13 and 163.22. In addition, § 5.33(g)(7)(ii) includes a provision under which a whole purchase and assumption of the target Federal savings association is treated as a consolidation for the Federal savings association so that the procedural requirements in paragraph (o) apply. The current regulations, at 12 CFR part 146 and 12 CFR 152.13, apply these requirements to such transactions now through the definition of ''combination'' in § 152.13(b)(1), which includes a whole purchase and assumption transaction between depository institutions, in addition to a consolidation and a merger.

Section 5.33(g)(7)(iii) sets out the process for appraisal of dissenters' shares of stock in a Federal stock savings association involved in a consolidation or merger into a state bank, state savings bank, state savings association, state trust company, or credit union. The process is similar to the process included in § 5.33(g)(3)(i)(C), described above, for appraisal of dissenters' shares of stock in a Federal stock savings association involved in a consolidation or merger into a another Federal savings association. Section 5.33(g)(7)(iv) includes a requirement that the consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution. This requirement is based on provisions in §§ 146.2(b)(9) and 152.13(f)(9). Although not currently in § 5.33, it is a requirement for national banks as discussed in the Comptroller's Licensing Manual.

Expedited review. Section 5.33(i) provides for expedited review of business reorganizations (defined in

[71] *See* 12 U.S.C. 215a–3.

[72] The portions of current § 5.33(g)(3) that address a consolidation or merger of a national bank into a Federal savings association remain in revised § 5.33(g)(3).

§ 5.33(d)(3)) and for streamlined applications for eligible business organizations (described in § 5.33(j)). The proposal adds Federal savings associations to § 5.33(d)(3) and (j) so that Federal savings association applications that meet the requirements are eligible for expedited review. Under expedited review, an application is deemed approved as of the later of the 45th day after the application was filed or the 15th day after the close of the comment period, unless the OCC notifies the applicant that the application is not eligible for expedited review or the expedited review process is extended. Business reorganizations eligible for expedited review are (1) a business combination between eligible depository institutions owned by the same holding company, or (2) a business combination between an eligible bank or savings association and an interim national bank or interim Federal savings association that is being effected to form a holding company that would own the eligible bank or savings association. For both business reorganizations eligible for expedited review and for streamlined applications, the acquiring bank must be an eligible bank and the resulting institution must be well capitalized. There are several types of streamlined applications. The different types of streamlined applications vary depending on the other institutions' status as eligible institutions, the amount by which the resulting institution would grow in size, and, in some cases, a prefiling approval from the OCC to use a streamlined application.

Under the final rule, expedited review under § 5.33(j) replaces the automatic approval provision in § 163.22(f) for Federal savings associations. Under § 163.22(f), an application is deemed to be approved automatically 30 days after the OCC sends the applicant a written notice that the application is complete. An application is removed from the automatic approval process in a number of specified circumstances. Many of these circumstances are the same as those that would cause an application not to be eligible for expedited review under § 5.33(j). However, the size-based limit included in § 163.22(f) is more restrictive than eligibility for expedited review as a business reorganization or streamlined application in § 5.33. Under § 163.22(f)(10), an application does not qualify for the automatic approval process if the acquiring institution has assets of $1 billion or more and proposes to acquire assets of $1 billion or more. Business reorganizations have no size limit. Streamlined applications under § 5.33(j) have limits based on the relative size of the acquiring institution and the assets to be acquired but do not have a fixed maximum dollar amount limit on the size. In addition, under § 163.22(f) a number of the other disqualifying conditions are based on the competitive impact of the proposed combination, creating safe harbors that the proposal must meet in order to qualify for the automatic approval process. The OCC believes it is not necessary to include competitive impact thresholds in the regulation. The OCC will notify the applicant that the application is not eligible for expedited review if it raises potential competitive concerns. Accordingly, the final rule does not include the automatic approval process of § 163.22(f), but does add one of the disqualifying factors set forth in § 163.22(f) to the streamlined application provision. Specifically, under § 5.33(j)(2), an applicant would not qualify for a streamlined business combination application if the transaction is part of a mutual to stock conversion under 12 CFR part 192.

We received one comment on this expedited process advocating the removal of expedited review from the regulation, stating that no bank should be able to merge without explicitly outlining the public benefits that will result from the merger. This commenter also notes that stating that the merger will not impede the bank's ability to comply with the CRA should not qualify as a plan under the CRA. The OCC disagrees with this comment. Allowing a merger only if explicit public benefits exist would represent a policy change and is more stringent than the statutory requirement. Furthermore, the OCC will remove the application from expedited processing if the application, or adverse comments regarding the application, presents a significant CRA concern. Finally, the OCC does not believe expedited processing should be withheld from the many filings where the CRA is not a concern.

The same commenter also requested that we actively continue to reach out to community organizations in the area affected by the transaction, through interviews and public hearings, to evaluate fully how the bank is addressing community needs and how it will do more after the merger. We note that in conjunction with the Federal Reserve Board the OCC has recently held a public meeting regarding a bank merger application and has periodically participated in public hearings or meetings sponsored by the Federal Reserve Board. The OCC will continue to consider carefully each application on the basis of all relevant factors when determining whether to grant a request for a public hearing, pursuant to § 5.11.

Exit Notice. The final rule adds a new § 5.33(k) for notices to be filed when a national bank or Federal savings association is consolidating or merging with another national bank or Federal savings association or with a state chartered institution or credit union and the target national bank or Federal savings association is not the resulting institution. This section also includes the steps an institution takes to terminate its status as a national bank or Federal savings association. This new provision gathers in one place material from current §§ 5.33(g)(3), 163.22(b) and 163.22(h)(1)(i) on filing the notice and the timing of the filing, material from § 163.22(h)(1)(i) and (ii) on the content of the notice, and material from §§ 5.33(g)(3), 146.2(g), and 152.13(k) on termination of the institution's status as a national bank or Federal savings association. There is no change for Federal savings associations. However, national banks are required to include more information in the notice than currently required in § 5.33. This additional information includes a short description of the transaction or a copy of the filing made by the acquiring institution to its regulators for approval of the transaction and information showing the target national bank or Federal savings association has complied with the requirements to engage in the transaction (*e.g.,* board and shareholder approval). The OCC is adding this requirement to monitor the transaction to ensure that the national bank or Federal savings association complies with applicable law. The institution should have compiled this information already and therefore this change likely will result in minimal additional burden to the institution. Finally, § 5.33(k)(5) provides that an institution must submit a new notice if the business combination contemplated by the notice has not occurred within six months after receipt of the notice unless the OCC grants an extension of time. This requirement is in § 163.22(h)(1)(ii), except that the time period is shortened in the final rule from one year to six months to be consistent with the expiration period for OCC approvals under § 5.33(e)(7). This expiration provision is new for national banks. After six months the information in the original notice could be out of date. Moreover, a delay in consummating the transaction may indicate changes in the condition or circumstances of the parties. Treating the notice as having expired and requiring a new notice is similar to the

requirement in various sections of part 5 that an approval expires after a specified amount of time.

Transfer of assets and liabilities to the resulting institution. The final rule adds new § 5.33(l) to address corporate succession, *i.e.* the transfer of assets, liabilities, rights, franchises, interests, and fiduciary appointments to the resulting national bank or Federal savings association. It reflects the corporate succession provisions in national bank statutes [73] and continues the substance of current regulations providing succession for a Federal savings association when it is the resulting institution in a consolidation or merger.[74]

Certification of combination; effective date. The final rule adds a new § 5.33(m) to address the certification of a consolidation or merger and documentation of its effective date. Specifically, § 5.33(m) requires the applicant to submit information showing that all steps needed to complete the transaction have been met and to notify the OCC of the planned consummation date. The OCC would then issue a certification letter documenting that the consolidation or merger occurred and specifying the effective date. This new section reflects current OCC practice for national banks. The new section accomplishes through an applicant notification letter and issuance of an OCC certification letter what § 152.13(j) does in requiring the applicant to submit two sets of ''Articles of Combination'' that are filed with the OCC, and then endorsed by the OCC, with one set returned to the applicant with a specification of the effective date. The difference in forms and terminology does not represent a change in substance for Federal savings associations.

Authority and limits on business combinations and other transactions by Federal savings associations. The final rule adds a new § 5.33(n), which includes provisions in §§ 146.2 and 152.13 that set out the authority for Federal savings associations to engage in various types of business combinations and the limitations on that authority. Section 5.33(n)(1) is based on § 152.13(a) and provides that Federal savings associations may enter into business combinations only in accordance with § 5.33, the Bank Merger Act, and sections (5)(d)(3)(A) and 10(s) of the HOLA. Section 5.33(n)(2) is based on §§ 146.2(a) and 152.13(c), which provide that a Federal savings association may consolidate or merge with another depository institution, a state trust company or a credit union. However, in a merger or consolidation with a mutual Federal savings association, a mutual savings association must be the resulting institution. Section 5.33(n)(2) expands this authority to include the other business combinations listed in § 5.33(d)(2)(iv) and (v) and the other combinations listed in § 5.33(d)(10), including whole entity purchase and assumptions with any entity. Also, the final rule does not include the requirement in §§ 146.2(a) and 152.13(c) with respect to Federal Home Loan Bank membership because membership in a Federal Home Loan Bank is no longer mandatory. Section 5.33(n)(3), which provides requirements for Federal mutual savings association boards of directors, is based on § 146.2(d). Section 5.33(n)(4),which provides requirements for notifying accountholders of the transaction, is based on § 163.22(e)(2). The final rule makes a conforming change to this provision based on the final rule's amendment of the definition of business combination, discussed above.

Procedural requirements for Federal savings association approval of combinations. The final rule adds a new § 5.33(o), which includes various provisions in §§ 146.2 and 152.13 that set out the procedural requirements for board, shareholder (in the case of stock savings associations), and, if required by the OCC, voting member (in the case of mutual savings associations) approval of business combinations involving the Federal savings association. As noted earlier, §§ 146.2 and 152.13 use the term ''combination'' to include a whole purchase and assumption transaction, as well as a consolidation or merger, and therefore apply these procedural requirements to those transactions. Section 5.33 uses the term business combination more broadly. In order to avoid applying the requirements to a broader set of transactions and achieve the same result as §§ 146.2 and 152.13, the final rule uses ''consolidation or merger'' instead of ''combination'' in § 5.33(o), and requires in § 5.33(g)(2), (g)(3), and (g)(7) that a whole purchase and assumption transaction be treated as a consolidation by a Federal savings association for purposes of applying the requirements of § 5.33(o).

Section 5.33(o)(1) is based on §§ 146.2(b) and 152.13(e), except that the final rule reduces the required majority for the board of directors approval for Federal stock savings associations from two-thirds to a majority. The final rule does not reduce the requirement for Federal mutual savings associations. The board of directors vote is the principal vote and there typically is not a vote of the voting members, unless the OCC requires it as provided in § 5.33(o)(4). The final rule does not include in § 5.33 the provisions in §§ 146.2(b)(1) and 152.13(f) that require the savings association to include all terms regarding the combination in a combination agreement and to set out in some detail provisions that the agreement must contain. OCC practice with respect to national banks has not been to include these requirements in detailed regulations, as the drafting of a merger agreement is a business matter for the participating parties. However, we note that the Comptroller's Licensing Manual includes sample agreements.

Operating Subsidiaries of a National Bank (§ 5.34)

The proposal included a number of changes to the provisions governing operating subsidiaries of national banks set forth at 12 CFR 5.34. Some of these changes incorporated elements of the Federal savings association operating subsidiary regulations currently contained in 12 CFR part 159 in order to promote consistency between the regulations for operating subsidiaries for both charters.[75] A number of other changes clarified existing provisions in § 5.34.

The OCC is adopting the amendments to § 5.34 as proposed with one clarifying change related to joint ventures. A summary of changes to § 5.34 and the comments we received on this provision are set forth below.

Scope. The final rule amends the scope section in § 5.34(c) by including language from § 159.1(a) that provides that the OCC may, at any time, limit a national bank's investment in an operating subsidiary, or may limit or refuse to permit any activities in an operating subsidiary, for supervisory, legal, or safety and soundness reasons. While the OCC currently has this authority, we are clarifying the regulation by explicitly including this language.

Standards and requirements. The final rule adds a new § 5.34(e)(1)(ii),

[73] 12 U.S.C. 214b, 215(e) and 215a(e).

[74] 12 CFR 146.3 (Federal mutual savings associations); 12 CFR 152.13(l) (stock Federal savings associations).

[75] Elsewhere in this final rule, we add a new § 5.38 to part 5 of our regulations to address Federal savings association operating subsidiaries. New § 5.38 is based on § 5.34, and many of its provisions are nearly identical or very similar. However, the rules reflect some differences between national bank operating subsidiaries and Federal savings association operating subsidiaries based on certain statutory provisions. The similarities and differences are discussed in the § 5.38 portion of this preamble.

which provides that before beginning business an operating subsidiary must comply with other laws applicable to it, including applicable licensing or registration requirements. This is not a new requirement for national banks. The final rule also clarifies that compliance with § 5.34 and approval of an operating subsidiary by the OCC are not the only requirements that must be met to establish an operating subsidiary.

Section 5.34(e)(2) provides the criteria for a subsidiary to qualify as a national bank operating subsidiary. Section 5.34(e)(2)(i)(A) currently states that the national bank must have the ability to control the management and operations of the subsidiary. The proposed rule clarified this provision by adding that no other person or entity has the ability to control the management or operations of the subsidiary. This statement reflects current OCC practice regarding national bank operating subsidiaries and is based on a provision in § 159.3(c)(1). We added it to be consistent with that provision and the new Federal savings association operating subsidiary regulation.

We received two comments on this provision regarding control. One commenter stated that the current requirements already ensure the banks have sufficient control and that this new provision will create uncertainty for joint venture arrangements organized as national bank operating subsidiaries. Another commenter stated that the proposed language could be read to suggest that a bank must own 100 percent of the voting stock of an entity for that entity to be an operating subsidiary. This reading would prohibit a bank from acquiring a controlling interest in a joint venture as an operating subsidiary if another entity or person owns or controls a minority interest in the voting shares of the entity. The commenter noted that this would significantly depart from OCC precedent and therefore requests the OCC to clarify that a national bank may continue to invest in a joint venture or partnership that qualifies as an operating subsidiary under § 5.34(e)(2) if the bank has the ability to control the management and operations of the subsidiary and no other party controls more than 50 percent of the voting (or similar type of controlling) interest in the subsidiary.

As noted above, the proposed change was based on a provision in the Federal savings association rule and reflects current practice regarding national bank operating subsidiaries. However, to address the commenter's concern that this statement could be interpreted overly broadly, the final rule replaces the proposed language with the following statement: ''and no other person or entity exercises effective operating control over the subsidiary or has the ability to influence the subsidiary's operations to an extent equal to or greater than that of the bank.'' This language is taken in part from § 159.2, and we believe that it implements more clearly our intent that, for a joint venture company to qualify as an operating subsidiary, no other investor in the joint venture may have control or influence over the company that is equal to or more than the national bank.[76] The final rule makes a similar, conforming change to § 5.34(e)(5)(ii)(A)(*3*) in the context of joint ventures qualifying for expedited review, as discussed below.

The final rule also revises § 5.34(e)(2)(i)(B) to clarify that where the bank owns less than 50 percent of an operating subsidiary (but still controls it), no other party can own a greater percentage than the bank. This reflects current OCC practice set out in the Comptroller's Licensing Manual.

In addition, the final rule adds community development corporation subsidiaries under 12 U.S.C. 24(Eleventh) and part 24 as an additional example of the type of operating subsidiary not subject to § 5.34. The proposed rule did not include this example. We have added it to the final rule for clarification purposes.

Furthermore, the final rule adds a new § 5.34(e)(2)(iii) to clarify that the national bank must have reasonable policies and procedures to preserve the limited liability of the bank and its operating subsidiaries. We adapted this provision from § 159.10 and it is consistent with the new operating subsidiary rule for Federal savings associations. It clarifies that the requirement that the bank must control the operating subsidiary does not mean they should be treated as a single entity.

We received one comment on new § 5.34(e)(2)(iii). This commenter stated that the proposal did not provide sufficient analysis to explain why national banks should be subject to a new policies and procedures requirements and does not believe that this is a clarifying change. However, we believe that this requirement is necessary so that the bank and subsidiary are not treated as a single entity even if the bank controls the subsidiary. We also note that this requirement and the requirement in the Federal savings association operating subsidiary rule (§ 5.38) is much simpler and less burdensome than the current savings association rule requirements for separate corporate identity in 12 CFR 159.10. We therefore decline to make the suggested changes.

Current § 5.34(e)(3) provides that a national bank's operating subsidiary conducts activities authorized under § 5.34 pursuant to the same authorization, terms and conditions that apply to the conduct of the parent national bank, except as otherwise provided under sections 1044 and 1045 of the Dodd-Frank Act. The final rule revises § 5.34(e)(3) to provide that a national bank's operating subsidiary conducts these activities unless otherwise specifically provided by regulation or published OCC policy, in addition to as provided by statute, including 1044 and 1045 of the Dodd-Frank Act. This change clarifies that there are other instances where different treatment of the operating subsidiary and the parent national bank may occur in addition to those regarding the application of state law addressed by the Dodd-Frank Act.

Current § 5.34(e)(5)(i) provides that national banks meeting certain requirements are not required to file a prior application but may give after-the-fact notice when establishing or acquiring an operating subsidiary or performing a new activity in an existing operating subsidiary. Current § 5.34(e)(5)(ii) requires a prior application and OCC approval in other instances and sets out the information that must be included in the filing. The final rule reverses the order of the application and notice provisions so that the application provision is first. This change simplifies and clarifies the opening language of each paragraph. It also makes the order of these provisions the same as that of the similar provisions in the regulation for operating subsidiaries of Federal savings associations. The final rule also makes technical revisions in § 5.34(e)(5)(ii)(A)(*3*), as redesignated in the final rule (current § 5.34(e)(5)(i)(A)(*3*)), to account for instances in which the operating subsidiary is a limited liability company, and makes other clarifying and technical changes in redesignated § 5.34(e)(5)(i) through (v).

Current § 5.34(e)(5)(vi) provides that no application or notice is required for a national bank that is well managed and adequately capitalized or well capitalized to acquire or establish an operating subsidiary or to perform a new activity in an existing operating

[76] If this requirement of control by the national bank is not met, the bank's investment may still be permissible as a noncontrolling investment under 12 CFR 5.36.

subsidiary, if the activities of the new subsidiary are limited to those previously reported to the OCC in connection with a prior operating subsidiary and certain other requirements are met. The final rule changes the requirement from adequately capitalized to well capitalized to be consistent with the well capitalized requirement to be eligible for the after-the-fact notice procedure.

The final rule also amends § 5.34(e)(5)(vii) to codify the OCC's position that when a national bank operating subsidiary wishes to act as a fiduciary, its national bank parent must have fiduciary powers and the operating subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary. The operating subsidiary may not rely on the national bank's fiduciary powers. Further, this provision explicitly provides that when an operating subsidiary that exercises investment discretion on behalf of customers or provides investment advice for a fee is a registered investment adviser, it is not necessary for its national bank parent to have fiduciary powers. These provisions reflect OCC practice as set out in the Comptroller's Licensing Manual.

Approvals. The final rule adds a new § 5.34(e)(5)(viii) to provide that OCC approvals granted under § 5.34 expire within 12 months if a national bank has not established or acquired the operating subsidiary or commenced the new activity in an existing operating subsidiary, unless the OCC shortens or extends the time period. One commenter stated that this 12-month expiration for OCC approvals is a new substantive requirement for both national banks and Federal savings associations. We disagree. This provision is included currently in operating subsidiary approval letters and, therefore, is not a new concept for national banks. We also note that this timing is similar to provisions in other sections of part 5 regarding the expiration of an OCC approval. Furthermore, setting a time limit on approvals is necessary to ensure that the approval reflects the current status of the applicant and that the application is not stale. For these reasons, we decline to make any changes to this provision.

National Bank and Federal Savings Association Investments in Service Companies (§ 5.35)

Twelve CFR 5.35 addresses national bank investments in bank service companies pursuant to the Bank Service Company Act, 12 U.S.C. 1861–1867. The Bank Service Company Act was amended in 2006 to permit Federal savings associations to invest in bank service companies.[77] The OTS did not adopt implementing regulations.

The authority of Federal savings associations to invest in bank service companies under the Bank Service Company Act is separate from the authority to invest in service corporations under section 5(c)(4)(B) of the HOLA.[78] Accordingly, a Federal savings association's investments in bank service companies are not included in the investment limits for service corporations in section 5(c)(4)(B). They instead are subject to the separate limits of the Bank Service Company Act, codified at 12 U.S.C. 1862. The OCC proposed to amend § 5.35 to make it applicable to Federal savings associations, to state explicitly certain authority of the OCC, to conform definitions to Dodd-Frank Act changes, and to make technical changes. The changes for Federal savings associations are not likely to be significant because Federal savings associations are already subject to the statute, and the filing procedures in § 5.35 follow the statute.

Specifically, the OCC proposed to amend the scope section in § 5.35(c) by including language, based on 12 CFR 159.1(a) to provide that the OCC may, for supervisory, legal, or safety and soundness reasons, limit at any time a national bank's or Federal savings association's investment in a bank service company or limit or refuse to permit any activities of any bank service company for which a national bank or Federal savings association is the principal investor. We did not receive any comments on this change and adopt it as proposed.

In addition, the OCC is adopting the proposed technical amendment to the definition of the term ''depository institution'' in § 5.35(d)(3) to conform it to 12 U.S.C. 1861(b)(4) as amended by section 357 of the Dodd-Frank Act. Section 357 of the Dodd-Frank Act also amended 12 U.S.C. 1861(b)(5) by striking the definition of ''insured depository institution'' and adding in its place a second definition of ''depository institution'' that refers to section 3 of the FDI Act. The OCC believes that the deletion of the term ''insured depository institution'' was inadvertent and not intended to effect a change because the statute continues to use this term throughout. Therefore, we have not changed the definition of ''insured depository institution'' in § 5.35(d)(4).

The OCC also proposed to change the filing and review process in § 5.35(f)(2). That section currently provides for an after-the-fact notice with no requirement for OCC approval before the bank makes the investment if specified eligibility conditions are met. We proposed to change it to a prior notice with OCC approval through an expedited review process, under which the notice is deemed approved on the 30th day after filing unless the OCC notifies the filer otherwise. We received one comment on this change. This commenter stated that the prior notice would be more burdensome than an after-the-fact notice. However, this prior notice process follows the statutory provisions more closely. Furthermore, because there have been very few Bank Service Company Act filings, this change should not add any material burden to the industry. Therefore, we are adopting the amendments as proposed.

We also are moving some of the provisions in § 5.35(f)(2) regarding what must be included in the notice to paragraph (g) of § 5.35, the general provision covering the required information. We also proposed to make a number of technical changes in § 5.35(c), (d)(3), (d)(4), (d)(6), (e), (f)(1), (f)(2), (f)(3), (f)(5) and (i). We did not receive any comments on these changes and adopt them as proposed. We also are making a technical change to correct a cross-reference in § 5.35(f)(2)(ii)(B), which currently refers to § 5.38(d). It should refer to § 5.38(e)(5)(v).

Investment in National Bank or Federal Savings Association Premises (§§ 5.37, 7.1000, 7.3001)

Under 12 U.S.C. 29, a national bank may purchase and hold real property necessary to transact business and may hold real estate in exchange for debts previously contracted subject to certain divestiture requirements. Under 12 U.S.C. 371d, a national bank is required to obtain prior OCC approval to invest in bank premises, unless its aggregate investment and related indebtedness is less than or equal to either the bank's capital stock or 150 percent of the bank's capital and surplus (and the bank meets certain other criteria, as described below).

National banks are subject to several regulations that further delineate the parameters of their investment in and use of real property. Specifically, 12 CFR 7.1000 details the types of real estate that are necessary, pursuant to 12 U.S.C. 29, for a national bank's transaction of business, including premises owned and occupied by the bank, its branches, and its subsidiaries; property intended to be used for future

[77] Public Law 109–351, section 602, 120 Stat. 1966, 1967 (2006).

[78] 12 U.S.C. 1464(c)(4)(B).

bank expansion; and other property to be used by bank customers and employees. Section 7.1000 cross-references 12 CFR 5.37, which contains the quantitative limitations based on a national bank's capital that are specified in 12 U.S.C. 371d. Section 5.37 also prescribes the OCC premises approval process. Twelve CFR 7.3001 sets forth the rules that apply when a national bank shares its space and employees with other entities. Finally, 12 CFR 34.84 sets forth specific requirements for property held for future bank expansion.

No statute specifically addresses a Federal savings association's investment in banking premises.[79] However, the OCC issued regulations governing a Federal savings association's investment in banking premises pursuant to the OCC's general supervisory and rulemaking authority under the HOLA. Specifically, 12 CFR 160.37 permits a Federal savings association to invest in real estate, whether improved or unimproved, to be used for office and related facilities of the association if such investment is made and maintained under a prudent program of property acquisition to meet the association's present needs for office and related facilities and the outstanding book value of these investments does not exceed the association's total capital. In addition, OCC regulations at 12 CFR part 159 recognize certain real estate-related activities as permissible for a Federal savings association service corporation, including real estate development and the acquisition of real estate for use by a stockholder of the service corporation. OCC guidance provides that a Federal savings association ordinarily must obtain prior OCC approval if such investments would exceed the amount of its total capital.[80] Currently, a Federal savings association seeking to exceed the total capital limitation would request a waiver under 12 CFR 100.2.

The OCC proposed numerous changes to these regulations, including applying the national bank regulations to Federal savings associations, rescinding 12 CFR 160.37, and making clarifying amendments. We did not receive any comments on these proposed changes and adopt them as proposed, except for the change in date for the grandfathering provisions, discussed below.

National bank ownership of property (12 CFR 7.1000). The final rule amends 12 CFR 7.1000 to make it applicable to Federal savings associations and to make other changes described below. While we do not believe that there are significant substantive differences between §§ 7.1000 and 160.37 and related OTS guidance, § 7.1000 provides additional detailed regulatory guidance that we believe, as a supervisory matter, is appropriate to apply to both national banks and Federal savings associations.

Revised § 7.1000(a) permits a Federal savings association to invest in real estate necessary to transact its business. Revised § 7.1000(a)(2) provides a non-exclusive list of permissible real estate investments for Federal savings associations. These investments are generally permitted for Federal savings associations under § 160.37, with the addition of lodging for customers, officers, or employees of the Federal savings association, its branches or consolidated subsidiaries in areas where suitable commercial lodging is not readily available, which is currently permissible for national banks.

Under § 7.1000(a)(3), a national bank is permitted to hold premises through any reasonable and prudent means, including fee ownership, leasehold estate, and interest in a cooperative. It also is permitted to hold such premises directly or through one or more subsidiaries and to organize a premises subsidiary as a corporation, partnership, or similar entity, such as a limited liability company. Section 160.37 permits a Federal savings association to invest in real estate, whether improved or unimproved, to be used for office and related facilities of the association under certain conditions, though it does not address how a Federal savings association may hold such premises. By adding Federal savings associations to § 7.1000(a)(3), the OCC is making clear that a Federal savings association may hold its premises in any of the means set forth in that section. In addition, the OCC is adding a new paragraph to recognize a Federal savings association's separate authority under part 159, which is amended and redesignated as 12 CFR 5.59 in this final rule, to acquire and hold banking premises in a service corporation.

In paragraph (c)(1) of § 7.1000, the final rule deletes the reference to 12 U.S.C. 371d and replaces it with language to clarify that the quantitative limitations in § 5.37(d)(1)(i) and (d)(3)(i) govern when OCC approval is required to invest in banking premises. The final rule also divides § 7.1000(c)(2) into two separate paragraphs. Paragraph (c)(2)(i) clarifies that a national bank or Federal savings association must seek approval to invest in banking premises in accordance with § 5.37(d). New paragraph (c)(2)(ii) clarifies that a Federal savings association that invests in banking premises through a service corporation must comply with the quantitative limitations in § 5.37(d), and, to the extent applicable, § 5.59. As described below, the amendments to § 5.37(d) clarify which requirements in § 5.37(d) apply to service corporations.

Under redesignated § 7.1000(c)(3), a national bank must receive OCC approval to exercise an option to purchase banking premises or stock in a corporation holding banking premises if the price of the option and the bank's other investments in banking premises exceed the amount of the bank's capital stock. The final rule simplifies paragraph (c)(3) by removing the unnecessary language explaining when approval is required and replacing it with a statement that the national bank or Federal savings association must comply with the requirements in § 5.37(d). The procedures in § 5.37(d) are discussed below. In addition, we are making other nonsubstantive, clarifying changes. Section 160.37 does not address an option to purchase banking premises or stock in a corporation holding banking premises; therefore, this is a new requirement for a Federal savings association.

The final rule deletes § 7.1000(d), Other real property, because the two examples provided are based on well-established precedent, and we believe it is unnecessary to include them in § 7.1000. Section 7.1000(d) was not intended to be a limitation on ownership of real property, and deleting it eliminates the need to add clarifying language. Furthermore, deleting § 7.1000(d) simplifies § 7.1000 by limiting it to real estate necessary for the transaction of business.

Current § 34.84 provides rules for a national bank's investment in future banking premises and is contained in the OCC's rules on ''other real estate owned'' (OREO). Specifically, this section provides that a national bank normally should use real estate acquired for future expansion within five years and, after holding such real estate for one year, state by resolution of the board of directors or an appropriate authorized bank official or a subcommittee of the board of directors, definite plans for the use of such real estate.[81] This resolution

[79] The OCC is using the term ''banking premises'' instead of ''bank premises'' in revised §§ 5.37, 7.1000, and 7.3001 to alleviate any confusion with respect to Federal savings associations.

[80] OTS Handbook, Section 252, Fixed Assets, April 1999, p. 2.

[81] National banks and Federal savings associations should be aware that if they decide not to use real estate acquired for future banking premises, the investment will be considered other real estate owned and subject to applicable OREO requirements. For savings associations, *see* Comptroller's Handbook, ''Other Real Estate

Continued

or other official action must be available for inspection by bank examiners. The final rule moves § 34.84 from part 34, subpart E, Other real estate owned, to § 7.1000 as paragraph (d) because it relates to banking premises, not other real estate owned, and amends it to include Federal savings associations.

To minimize practical difficulties that may arise as a result of these changes, the proposed rule included a transition provision, § 7.1000(e), that grandfathered Federal savings associations' existing premises investments, provided the investment complies with the legal requirements in effect prior to the publication date of the proposal and continues to comply with those requirements. The final rule includes this grandfathering provision. However, we have changed the transition date to the date of publication of the final rule, as we believe this is the more appropriate date on which to grandfather such investments. We note that modifying, expanding, or improving such investments, with the exception of routine maintenance, requires prior approval of the appropriate OCC supervisory office. We believe it is appropriate to require prior approval in these circumstances to ensure safety and soundness concerns are satisfied and to apply consistent standards to national banks and Federal savings associations.

Sharing space and employees (§ 7.3001). The final rule amends 12 CFR 7.3001 to make it applicable to Federal savings associations. While § 7.3001 is more detailed than OTS guidance, as described below, we do not believe that there are substantive differences in the way in which national banks and savings associations share offices and employees. Section 7.3001 provides additional guidance on how to share offices and employees in a manner that protects customers and is consistent with safe and sound banking practices. The OCC believes that, as a supervisory matter, it is appropriate to apply similar specific safety and soundness restrictions to both national banks and Federal savings associations.

Although current § 7.3001 provides for the sharing of office space and employees, § 160.37 does not specifically provide for such sharing arrangements. However, through guidance, a Federal savings association is authorized to share space in a manner similar to that provided in § 7.3001, and the safety and soundness requirements imposed are substantially similar, though not identical, to those imposed by § 7.3001(c). For example, both the guidance and § 7.3001(c) prohibit joint ventures, but the methods to determine what constitutes a joint venture are different. Under § 7.3001(c)(3), what constitutes a joint venture or partnership is determined by applicable state law. In addition, under revised § 7.3001(a), a Federal savings association is permitted to: (1) lease excess space on banking premises to one or more other businesses (including other banks, Federal or state savings institutions, or financial institutions); (2) share space jointly held with one or more other businesses; or (3) offer its services in space owned or leased to other businesses. Under revised § 7.3001(b), as part of such a sharing arrangement, a Federal savings association may, pursuant to a written agreement, agree that its employee may act as an agent for the other business, or an employee of the other business may act as an agent for the savings association. Under revised § 7.3001(c), a Federal savings association sharing office space is required to satisfy eight requirements intended to ensure that the practice of sharing space was conducted in a safe and sound manner and also provides customer protections. This treatment is substantially similar to that in OCC guidance for Federal savings associations.[82]

To minimize practical difficulties that may arise as a result of these changes, the proposed rule added a transition provision, § 7.3001(e), that grandfathers existing sharing arrangements, provided such sharing arrangements comply with the legal requirements in effect prior to the publication date of this proposal and continue to comply with those requirements. The final rule includes this grandfathering provision. However, we have changed the transition date to the date of publication of the final rule, as we believe this is the more appropriate date on which to grandfather such arrangements. We note that the savings association may not amend or renew the agreement, or extend the agreement beyond its current term, without the prior approval of the appropriate OCC supervisory office. We believe it is appropriate to require prior approval in such circumstances to ensure customers are protected and safety and soundness concerns are satisfied, and to apply consistent standards to national banks and Federal savings associations.

Investment in banking premises (§ 5.37). The proposed rule amends § 5.37 to make it applicable to Federal savings associations and to make other changes as described below. The OCC believes that, for safety and soundness purposes, it is prudent to apply the procedures and quantitative investment limitations in § 5.37 to both national banks and Federal savings associations. We received no comments on these amendments and adopt them as proposed, with one technical amendment, discussed below.

Current § 5.37(d)(1)(i) requires a national bank to submit an application to the appropriate supervisory office to make an investment in bank premises, or to make loans to or upon the security of the stock of such a corporation, if the aggregate of all such investments and loans, together with the indebtedness incurred by any such corporation that is an affiliate of the national bank, will exceed the amount of its capital stock. Section 5.37(c) defines ''bank premises'' as including (but not limited to): (1) Premises that are owned and occupied (or to be occupied, if under construction) by the bank, its branches, or its consolidated subsidiaries; (2) capitalized leases and leasehold improvements, vaults, and fixed machinery and equipment; (3) remodeling costs to existing premises; (4) real estate acquired and intended, in good faith, for use in future expansion, or (5) parking facilities that are used by customers or employees of the bank, its branches, and its consolidated subsidiaries. In contrast, § 160.37 does not contain a detailed definition and states, in general, that real estate may be used for office and related facilities for the association's current and future use.

Current § 5.37(d)(1)(ii) requires the application to make an investment in banking premises to include a description of the bank's present investment in banking premises, the investment in the premises that the bank intends to make, the business reason for the investment, and the amount by which the national bank's aggregate investment will exceed the amount of its capital stock. Current § 5.37(d)(2) provides information regarding the approval process, including that an application is deemed approved on the 30th day after the filing is received by the OCC, unless the OCC notifies the national bank prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or policy issue. The final rule makes these provisions applicable to a Federal savings association, and makes other nonsubstantive, clarifying changes.

Current § 5.37(d)(3) provides an after-the-fact notice process if a national bank

Owned'' (Sept. 2013) (''OREO Handbook''), and for national banks, *see* 12 CFR part 34, subpart E and the OREO Handbook.

[82] OTS Handbook, Section 252, Fixed Assets, p. 3.

satisfies certain requirements. Specifically, a national bank may make an aggregate investment in banking premises up to 150 percent of its capital and surplus with after-the-fact notice to the OCC instead of the OCC's prior approval, provided that the national bank has a 1 or 2 CAMELS rating, is well capitalized as defined in 12 CFR part 6, and will continue to be well capitalized after it makes the investment or loan.

The final rule makes these provisions applicable to Federal savings associations. However, a Federal savings association may not be eligible for after-the-fact notice if 12 U.S.C. 1828(m)(1) applies to the transaction. Twelve U.S.C. 1828(m)(1) requires a Federal savings association to file a 30-day prior notice when it establishes or acquires a subsidiary or when it conducts a new activity in a subsidiary. Thus, a Federal savings association would not be eligible for the after-the-fact notice process described in § 5.37(d)(3)(i) if it proposes to establish or acquire a subsidiary to make an investment in banking premises, or if investing in banking premises would be a new activity for such a subsidiary. In those circumstances, the Federal savings association is required to comply with the provisions of § 5.38 in the case of an operating subsidiary or § 5.59 in the case of a service corporation. Accordingly, the final rule reorganizes current § 5.37(d)(3) by redesignating it as § 5.37(d)(3)(i), General rule, and adding a new paragraph (d)(3)(ii), Exception, to describe the circumstances under which a Federal savings association is not eligible for the after-the-fact notice process and to identify the applicable requirements.

Furthermore, the final rule provides that Federal savings associations' investments in banking premises through a service corporation are not subject to the application and notice requirements of § 5.37(d); instead, a Federal savings association must comply with the requirements in proposed § 5.59. However, the institution must include the amount of the investment when calculating the quantitative limitations in paragraph (d). Therefore, the final rule redesignates current § 5.37(d)(4), Exceptions to rules of general applicability, as paragraph (d)(5), and adds a new paragraph (d)(4) to clarify the treatment of an investment in banking premises through a service corporation.

As indicated above, pursuant to 12 U.S.C. 29 and 371d, current § 5.37 provides that the quantitative limitations on a national bank's investment in banking premises are expressed as a percentage of ''capital stock'' or ''capital and surplus.'' Under § 160.37, the sole quantitative limit on a Federal savings association's investment in banking premises is based on ''total capital.'' [83] The final rule applies the quantitative investment limitations currently applicable to national banks to Federal savings associations, with the exception of Federal mutual savings associations, as discussed more fully below. To avoid confusion, the final rule also adds the definitions for the terms ''capital stock'' and ''capital and surplus'' in paragraph (c). Because the vast majority of national banks and Federal savings associations have a CAMELS rating of 1 or 2,[84] we believe the relevant limit for a Federal savings association generally will be ''capital and surplus,'' which is not materially different from ''total capital.'' In addition, for a Federal savings association that satisfies the criteria in § 5.37(d)(3)(i), the quantitative limitation will be 150 percent of capital and surplus, which would be a greater amount than 100 percent of ''total capital.'' Thus, we expect that the amount that most Federal savings associations can invest in banking premises without OCC approval will be increased, thereby reducing burden on those Federal savings associations. For a Federal savings association that does not have a CAMELS rating of 1 or 2 or is not well capitalized the relevant limitation instead is ''capital stock,'' which is a significantly lower threshold than ''total capital.'' While we are aware that this new lower threshold likely would increase the burden on low-rated Federal savings associations, we believe that additional scrutiny of investments in banking premises by such Federal savings associations is warranted for safety and soundness purposes.

In the case of a Federal mutual savings association, which by definition does not issue stock, a limit based on capital stock will not work. However, we believe it is important, wherever possible, to apply consistent standards to national banks and Federal savings associations, both from a safety and soundness perspective and an administrative perspective. Accordingly, because a Federal mutual savings association's equity capital consists primarily of retained earnings, we will use retained earnings as a proxy for capital stock for purposes of the quantitative limitations on investments in banking premises by Federal mutual savings associations. This limitation based on retained earnings is not a significant change for a Federal mutual savings association because, generally, ''total capital'' of a Federal mutual savings association mostly consists of retained earnings. Moreover, a Federal mutual savings association that is CAMELS 1- or 2-rated and well capitalized will have a higher limit of 150 percent of retained earnings.

The proposed rule added a transition provision, § 5.37(e), to grandfather existing banking premises investments. However, as indicated above, § 7.1000(e), which contains the substantive authority for national banks and Federal savings associations to invest in banking premises, contains the identical transition provision. Section 5.37(e) is therefore unnecessary and the final rule does not include it.

Operating Subsidiaries of Federal Savings Associations (New § 5.38)

Twelve CFR part 159 addresses subordinate organizations of Federal savings associations. This part covers both operating subsidiaries and service corporations of Federal savings associations. The OCC proposed to create a new § 5.38 to address only operating subsidiaries of Federal savings associations and to remove those provisions of part 159 that address Federal savings association operating subsidiaries.[85] The OCC is adopting new § 5.38 with the changes discussed below.

In order to make the regulations applicable to Federal savings

[83] As mentioned previously in this preamble, the OCC issued a final rule on October 11, 2013 that, among other things, amends the OCC's risk-based and leverage capital rules and integrates the OCC's national bank and Federal savings association capital rules. 78 FR 62018 (Oct. 11, 2013). This capital final rule had a two-tier effective date, however, with the rule applicable for all banks and savings associations on January 1, 2015. Because this licensing final rule is issued after the January 1, 2015 effective date, we have removed references to the former Federal savings association capital rule, 12 CFR part 167, and related provisions of 12 CFR 165 (prompt corrective action) originally included in the proposed rule, as they are no longer applicable,

[84] According to the OCC's 2014 Annual Report, in the fiscal year 2014, 87 percent of national banks and Federal savings associations had a CAMELS rating of 1 or 2. Office of the Comptroller of the Currency, Annual Report, Fiscal Year 2014, at 70, available at *http://www.occ.gov/publications/publications-by-type/annual-reports/2014/ar-2014-full.pdf.*

[85] As stated elsewhere in this rulemaking, the final rule includes a new § 5.59 that addresses Federal savings association service corporations. The OCC is separating the regulations for Federal savings association operating subsidiaries and service corporations in order to better organize our rules and to have consistent parallel provisions for operating subsidiaries of national banks and Federal savings associations. As a result, all of part 159 is removed.

associations more consistent with those that apply to national banks, new § 5.38 is based on current OCC regulations at 12 CFR 5.34. As a result, many of the provisions in new § 5.38 and § 5.34, as revised by this final rule, are nearly identical. Other requirements in new § 5.38 are similar to those in part 159. However, there are some differences between new § 5.38 and provisions in part 159 and § 5.34. These differences are described below.

New § 5.38(b) requires a Federal savings association, when required under section 18(m) of the FDI Act,[86] to file an application to acquire or establish any operating subsidiary or to commence a new activity in an existing operating subsidiary. Under §§ 159.1(a) and 159.11, when required under section 18(m) of the FDI Act, a Federal savings association must give 30 days' notice [87] to the OCC prior to establishing or acquiring an operating subsidiary or commencing a new activity in an operating subsidiary.[88] The final rule changes this prior notice requirement in the current rule to an application in order to provide the OCC with an appropriate opportunity to review the proposed transaction. We did not receive any comments on this change. We have made a technical correction to this provision in the final rule, however, by adding back in the reference to section 18(m) of the FDI Act to the text of § 5.38(b).

Section 159.3(a)(1) also provides that any finance subsidiary that existed on January 1, 1997, is deemed to be an operating subsidiary without further action by the savings association. The OCC is not including this provision in § 5.38 as it is not needed. This omission is not intended to be a change in substance.

Paragraph (c) of new § 5.38 addresses the scope of this section. This paragraph mirrors paragraph (c) of § 5.34, including the additional language currently contained in § 159.1(a) added to § 5.34(c) by this rulemaking, that permits the OCC to limit a Federal savings association's investment in an operating subsidiary or limit or refuse to permit any activities of an operating subsidiary for supervisory, legal, or safety and soundness reasons. The OCC did not receive any comments on this provision.

Paragraph (d) of new § 5.38 sets out definitions for ''well capitalized'' and ''well managed,'' which the OCC will use to determine if an application is eligible for expedited review by the OCC. These definitions are the same as those in § 5.34(d), and the OCC uses these terms as criteria to permit national banks to make an after-the-fact notice filing pursuant to § 5.34(e)(5). They are used similarly in § 5.38 to determine if an application by a Federal savings association is eligible for expedited review. The OCC did not receive any comments on this provision.

Like §§ 159.3(e)(1) and 5.34(e)(1)(i), paragraph (e)(1)(i) of new § 5.38 provides that a Federal savings association may conduct in an operating subsidiary activities that are permissible for the savings association to engage in directly. Section 5.38(e)(1) provides that before beginning business, an operating subsidiary must comply with other laws applicable to it, including applicable licensing or registration requirements. This requirement is not new for Federal savings associations. The final rule adds this language to clarify that compliance with § 5.38 and approval of an operating subsidiary by the OCC are not the only requirements that must be met. As indicated above, the final rule amends § 5.34(e) to also include this provision for national banks. The OCC did not receive any comments on § 5.38(e)(1).

Pursuant to § 159.3(c)(1), a Federal savings association must own, directly or indirectly, more than 50 percent of the voting shares of an operating subsidiary and no one else may exercise effective operating control. New § 5.38(e)(2) describes what entities are ''qualifying subsidiaries'' for purposes of § 5.38. We have revised this provision in the final rule to mirror revised § 5.34(e)(2). Unlike § 159.3(c)(1), the rule includes as a qualifying subsidiary one in which the savings association owns less than 50 percent of the voting shares. Specifically, under the final rule, a qualifying subsidiary is one in which: (1) The savings association has the ability to control the management and operations of the subsidiary and no other person or entity exercises effective operating control over the subsidiary or has the ability to influence the subsidiary's operations to an extent equal to or greater than the savings association; and (2) the savings association owns and controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary, or the parent savings association otherwise controls the operating subsidiary and no other party controls a greater percentage of the voting (or similar type of controlling) interest of the operating subsidiary than the Federal savings association. In addition, as is currently the case under part 159, the operating subsidiary must be consolidated with the savings association under generally accepted accounting principles (GAAP). Section 5.38(e)(2)(iii), adapted from § 159.10, expressly requires the savings association to have reasonable policies and procedures to preserve the limited liability of the savings association and its operating subsidiaries. Furthermore, it clarifies that the requirement that the savings association must control the operating subsidiary does not mean they should be treated as a single entity. We note that § 5.38 does not contain the detailed requirements for this corporate separateness that are in § 159.10.

We received one comment relating to § 5.38(e)(2) that requested additional clarification on how Federal savings associations could ''otherwise [control] the operating subsidiary.'' Because this is the same standard that is applied to national banks, Federal savings associations can look to the applications of this provision with respect to national banks to better understand how this standard operates, and the OCC staff is available to assist with any questions. We do not believe a change in this provision is necessary and adopt it as proposed.

We also are making a clarifying change to § 5.38(e)(2). Section 159.3(e)(1) explicitly provides that a Federal savings association may hold another insured depository institution as an operating subsidiary. While this proposition remained the case under the proposed rule, it was not explicitly set out in the regulatory text. Upon further review, we believe the regulation should explicitly indicate this permissibility, even though we expect these transactions to be rare, and have added new paragraph (e)(2)(ii) to § 5.38 to state this.

Paragraph (e)(3) of new § 5.38 mirrors proposed § 5.34(e)(3). Similar to § 159.3(h)(1), paragraph (e)(3) generally provides that an operating subsidiary of a Federal savings association conducts activities pursuant to the same authorization, terms, and conditions that apply to the parent savings association, unless otherwise specifically provided by statute, regulation or published OCC policy. It also includes reference to the provisions in the Dodd-Frank Act regarding the application of state law, the subject of which is currently addressed in § 159.3(n)(1), and language to clarify that regulations or published OCC policy also may provide other instances in which different treatment of the operating subsidiary and the parent Federal savings association may occur in addition to those regarding the

[86] 12 U.S.C. 1828(m).

[87] Under these provisions in part 159, the OCC treats the notice as an application that is eligible for expedited treatment.

[88] *See* 12 U.S.C. 1828(m)(1) and (4).

application of state law addressed by the Dodd-Frank Act. In addition, this paragraph provides that, subject to certain statutory limitations, if the OCC determines that an operating subsidiary is in violation of law, regulation, or written condition, or in an unsafe or unsound manner or otherwise threatens the safety or soundness of the bank, the OCC will direct the savings association or operating subsidiary to take appropriate remedial action, which may include requiring the savings association to divest or liquidate the operating subsidiary, or discontinue specified activities. This provision is similar to § 159.3(q)(1). The OCC did not receive any comments on this provision.

Twelve U.S.C. 1467a(m)(5) governs consolidation of the assets of a subsidiary with those of the parent savings association for purposes of calculating portfolio assets and the qualified thrift lender test. New § 5.38(e)(4) addresses consolidation of figures and provides that the savings association and its operating subsidiaries shall be combined for purposes of applying statutory or regulatory limitations when the combination is needed to effect the intent of the statute or regulation. Section 5.38(e)(4) is consistent with § 159.3(i)(1), (j)(1), (k)(1), and (m)(1). The OCC did not receive any comments on this provision.

Section § 159.11 provides that when required by 12 U.S.C. 1828(m), Federal savings associations must file a notice at least 30 days prior to establishing or acquiring an operating subsidiary or conducting a new activity in an existing operating subsidiary. The OCC processes this notice in a manner similar to the OCC's expedited review for applications and notices of national banks.[89] Paragraph (e)(5) of new § 5.38 sets out the detailed procedures a Federal savings association must follow when filing applications required under § 5.38.[90] Paragraph (e)(5)(i)(B) of § 5.38 describes the contents of the application and mirrors current § § 5.34(e)(5)(i)(B), which is redesignated as § 5.34(e)(5)(ii)(B) in this final rule. Paragraph (e)(5)(ii)(A) of § 5.38 also mirrors § 5.34 and provides for expedited review of applications to establish or acquire an operating subsidiary, or to perform a new activity in an existing operating subsidiary. These applications are deemed approved by the OCC as of the 30th day after the filing is received, unless the OCC notifies the savings association otherwise during the 30-day period.[91] In order to be eligible for expedited review, § 5.38(e)(5)(ii)(B) provides that the savings association must be ''well capitalized'' and ''well managed,'' the activities to be performed by the operating subsidiary must be listed in § 5.38(e)(5)(v), and the operating subsidiary must be a corporation, limited liability company, or limited partnership. In addition, the savings association must clearly demonstrate control over the operating subsidiary, *i.e.,* the savings association: (1) must have the ability to control the management and operations of the operating subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management; (2) must hold more than 50 percent of the voting, or equivalent, interests in the operating subsidiary, and, in the case of a limited partnership or limited liability company, the savings association or an operating subsidiary thereof must be the sole general partner of the limited partnership or the sole managing member of the limited liability company; and (3) must be required to consolidate its financial statements with those of the operating subsidiary under GAAP. The OCC did not receive any comments on these provisions.

The § 5.38 expedited review process operates much like the process in § 159.11. As indicated above, under § 159.11 all Federal savings associations that wish to establish or obtain an interest in an operating subsidiary file a notice with the OCC when required under 12 U.S.C. 1828(m). No further action is required unless the OCC notifies the savings association within 30 days that the notice presents supervisory concerns or raises significant issues of law or policy, in which case the savings association must receive the OCC's approval under standard treatment processing procedures under part 116. Under § 159.11, all filings begin and are processed in this manner. Under the § 5.38 expedited review process, only filings that meet the eligibility requirements can begin as an expedited review application. However, we do not believe this change will be significant for savings associations. A filing that does not meet the eligibility test under the final rule has a higher likelihood of presenting supervisory concerns or raising significant issues of law or policy that would require an application under part 159. The OCC did not receive any comments on this provision.

Paragraph (e)(5)(iii) of new § 5.38 provides that the rules of general applicability at 12 CFR 5.8 (requiring public notice), 5.10 (addressing public comments received), and 5.11 (addressing requests for hearings or other meetings) do not apply to § 5.38, but the OCC may determine that any of these rules apply if the OCC concludes that the application presents significant or novel policy, supervisory, or legal issues.

Paragraph (e)(5)(v) of § 5.38 sets out a list of activities that are eligible for expedited review. This list is based on the list of activities eligible for notice for national banks in § 5.34(e)(5)(v), but has been adapted for Federal savings associations by listing only those activities that have been approved for operating subsidiaries of Federal savings associations in the past.. The OCC did not receive any comments on this provision.

Section 159.3(p)(1) provides that a Federal savings association must consult with the appropriate OCC licensing office prior to redesignating a service corporation as an operating subsidiary. It also requires the Federal savings association to make available for examination adequate internal records demonstrating that the redesignated operating subsidiary meets all of the requirements for an operating subsidiary and that the board of directors has approved the redesignation. Paragraph (e)(5)(vi) of § 5.38 requires a Federal savings association to provide 30 days' prior notice to the OCC when the savings association wants to redesignate a service corporation as an operating subsidiary. The OCC did not receive any comments on this provision.

Paragraph (e)(5)(vii) of new § 5.38 mirrors § 5.34(e)(5)(vii) and provides that when a Federal savings association operating subsidiary wishes to act as a fiduciary, its savings association parent must have fiduciary powers and the operating subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary. The operating subsidiary may not rely on the savings association's fiduciary powers. Further, this provision provides that when an operating subsidiary that exercises investment discretion on behalf of customers or provides investment advice for a fee is a

[89] If the OCC determines that the notice presents supervisory concerns or raises significant issues of law or policy, a Federal savings association must apply for approval under standard treatment processing procedures in part 116.

[90] Applications filed pursuant to § 5.38 also serve to satisfy the requirement for notice under 12 U.S.C. 1828(m).

[91] This differs from the national bank regulation. Under § 5.34(e)(5)(ii), as redesignated in this rulemaking, national banks may provide after-the-fact notice in certain circumstances. After-the-fact notice is not available to Federal savings associations due to a statutory requirement for prior notice. *See* 12 U.S.C. 1828(m).

registered investment adviser, it is not necessary for its savings association parent to have fiduciary powers. These provisions reflect OCC practice for national banks as set out in the Comptroller's Licensing Manual. The OCC did not receive any comments on this provision.

Paragraph (e)(5)(viii) of new § 5.38 provides that an OCC approval granted under § 5.38 expires within 12 months if a Federal savings association has not established or acquired the operating subsidiary or commenced the new activity in an existing operating subsidiary, unless the OCC shortens, or extends the time period. The final rule also adds this provision to § 5.34 for national banks. As previously indicated, this provision is similar to other provisions in part 5 regarding the expiration of an OCC approval. A commenter noted that this change would be a new requirement for Federal savings associations. The OCC does not believe this change is an entirely new requirement for Federal savings associations, because in a number of cases, the OTS imposed the requirement as a condition of approval of the formation of the operating subsidiary. Moreover, the OCC finds that setting a time limit for OCC approval is necessary to ensure that the approval reflects the current status of the applicant. Therefore, we are adopting the amendment as proposed.

Paragraph (e)(6) of new § 5.38 contains provisions regarding grandfathered Federal savings association operating subsidiaries. It is modeled on § 5.34(e)(6) and provides that, notwithstanding the requirements for a qualifying operating subsidiary in § 5.38(e)(2) and unless otherwise notified by the OCC with respect to a particular operating subsidiary, an operating subsidiary that a Federal savings association lawfully acquired or established before May 18, 2015 the date of **Federal Register** publication of this final rule, may continue to operate as a Federal savings association operating subsidiary, provided that the savings association and the operating subsidiary were, and continue to be, conducting authorized activities in compliance with the standards and requirements applicable when the operating subsidiary was established or acquired. The OCC did not receive any comments on this provision. However, we note that we have changed the grandfather date included in the proposed rule, June 10, 2014, the date of publication of the proposal, to the date of publication of the final rule, as we believe this is the more appropriate date on which to grandfather such existing operating subsidiaries.

Paragraph (e)(7) of new § 5.38 addresses the issuance of securities by an operating subsidiary. It is based on portions of § 159.12(a) and (c). The OCC also did not receive any comments on this provision.

The proposed rule included a new requirement for Federal savings associations to file an annual report with the OCC on operating subsidiaries that do business directly with consumers in the United States and that are not functionally regulated. This proposal mirrored the requirement for national banks at § 5.34(e)(7); there is no similar provision in part 159. We received one comment on this proposed report. This commenter stated that this reporting requirement would impose a new compliance burden without sufficient analysis or justification. The OCC has reconsidered this proposed report in light of this comment and no longer believes it is necessary. Federal savings associations have fewer operating subsidiaries than national banks, and the OCC is able to determine operating subsidiary ownership by means that are less burdensome than an annual report, such as through the examination process. However, the OCC will continue to monitor this area to determine if such a report becomes necessary in the future.

Finally, a chart in § 159.3 provides a detailed side-by-side comparison of operating subsidiaries and service corporations. The final rule includes some of this information from this chart in various provisions of § 5.38, such as the specific items that are necessary to set out qualifying requirements and licensing requirements. Furthermore, § 5.38(e)(4), Consolidation of figures, covers provisions included in the chart at § 159.3(i)(1), (k)(1), (l)(1), and (m)(1).[92] Other provisions of the chart are not necessary to include in a regulation as they merely repeat applicable law and are in the chart for purposes of the comparison with service corporations. These provisions include § 159.3(b)(1), (d)(1), (f)(1), (g)(1), and (j)(1). While the OCC is removing the chart from its regulations, we are considering including a similar chart in the Comptroller's Licensing Manual as a reference.

Change in Location of Main Office/ Home Office (§ 5.40)

Twelve CFR 5.40 addresses changes in location of a national bank's main office. Twelve CFR 145.91, 145.93 and 145.95 address changes in location of a Federal savings association's home office.[93] While these rules address a common subject there are a number of differences between them. We proposed to make the procedures for national banks and Federal savings associations more consistent and to consolidate our regulations by amending 12 CFR 5.40 to apply to Federal savings associations and to remove 12 CFR 145.91, 145.93 and 145.95.[94] We did not receive any comments on the proposed changes, and adopt the amendments as proposed, with one clarifying change. As described below, as a result of these changes, Federal savings associations are subject to certain additional notices and applications to assist the OCC in monitoring these institutions' activities. Although these procedures are different from those that savings associations currently follow when taking certain actions with respect to their home offices, we expect those institutions that qualify for treatment as highly rated savings associations under the current regulation will also qualify for expedited treatment under the amended regulation and that this will result in only minimal additional requirements.

Pursuant to § 145.93(a), a Federal savings association must file an application or notice with the OCC and receive approval or non-objection prior to changing the permanent location of its home office or prior to establishing a new home office. However, § 145.93(b) provides that an application or notice is not required for a Federal savings association to: (i) Establish a drive-in or pedestrian office within 500 feet of a public entrance to its existing home office; (ii) make a short-distance relocation of its home office; or (iii) redesignate an existing branch office as a home office when redesignating the existing home office as a branch office. In addition, § 145.93(b) permits certain highly rated Federal savings associations to change the permanent location of their home office or establish a new home office if the associations meet certain requirements without filing a notice or application. Section 145.95 contains processing procedures that apply to the aforementioned transactions.

[92] Part 32, lending limits, currently provides the information that had been included in § 159.3(k)(1). *See* 78 FR 37930 (June 25, 2013).

[93] The terms ''main office'' and ''home office'' are functionally the same. However, both terms are used in our regulations in order to be consistent with the relevant statutes that govern national banks and Federal savings associations, respectively.

[94] Sections 145.93 and 145.95 also address branch offices. The preamble discusses these provisions with respect to branch offices, above.

The final rule reorganizes § 5.40 slightly and applies it to Federal savings associations. It therefore discontinues the exceptions to filing applications or notices under § 145.93(b) related to main office locations, and replaces the applicable processing procedures contained in § 145.95 with those contained in 12 CFR part 5.

Section 5.40(b) sets out the licensing requirements for national banks to relocate their main office, and § 5.40(c) sets out the scope of the rule. Section 5.40(d)(1) provides that national banks may relocate their main office to an authorized branch location within the same city, town, or village limits by giving prior notice to the OCC, and § 5.40(d)(2) provides that national banks may relocate their main office to any other location by filing an application with the OCC. Section 5.40(d)(3) requires national banks to obtain OCC approval pursuant to the standards in § 5.30 in order to establish a branch at the site of a former main office. Section 5.40(d)(4) provides that an application submitted by an eligible national bank to move its main office to a location other than an authorized branch location will be approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC notifies the bank prior to that time that the filing is not eligible for expedited review, or the expedited review period is extended under § 5.13(a)(2). Section 5.40(d)(5) provides for exceptions to rules of general applicability in part 5 for relocations to an authorized branch location within the same city, town, or village limits. Finally, § 5.40(e) provides that an OCC approval of a main office relocation shall expire if the national bank has not opened its main office at the relocated site within 18 months of the date of the approval.

The final rule redesignates the scope section as § 5.40(b) and combines former paragraphs (b) and (d), which address licensing requirements and procedures, into a redesignated § 5.40(c). The final rule also applies these newly redesignated provisions to Federal savings associations. Redesignated § 5.40(c)(1) requires national banks and Federal savings associations to give prior notice to the OCC when relocating a main office or home office, as applicable, to an authorized branch location within city, town, or village limits. Redesignated § 5.40(c)(2)(i) requires national banks to submit an application to the appropriate OCC licensing office in order to relocate a main office to any location other than an authorized branch location in the city, town, or village in which the main office of the bank is located or to any other location within 30 miles of the limits of such city, town, or village, as provided by 12 U.S.C. 30.[95] As in the current rule, if a national bank is relocating its main office outside the limits of its city, town, or village, the national bank also must obtain the approval of shareholders owning two-thirds of the voting stock of the bank and amend its articles of association. This shareholder vote is required by statute.[96]

Redesignated § 5.40(c)(2)(ii) requires a Federal savings association to submit an application to the appropriate OCC licensing office and obtain prior OCC approval to relocate its home office to any location other than an authorized branch location within the city, town, or village in which the home office of the savings association is located. As with a national bank, a Federal savings association relocating the home office outside the limits of its city, town, or village is required to amend its charter. The final rule adds clarifying language to indicate that the savings association must obtain shareholder approval for such relocation of its main office if so required by its charter. We note that, unlike national banks, this shareholder approval is not required by statute.

Redesignated § 5.40(c)(3) requires a national bank or Federal savings association to follow the provisions of § 5.30 or § 5.31, respectively, in order to establish a branch at the site of a former main office or home office. Redesignated § 5.40(c)(4) provides expedited review for applications submitted under paragraph (c)(2) (relocations of a main office or home office to any location other than an authorized branch location) for eligible Federal savings associations as well as eligible national banks. The final rule also revises the expedited review time for short-distance relocations of a main office or home office so that they are deemed approved 15 days after the close of the comment period or 30 days after the date the notice is filed, whichever is later. This change reflects the shorter 15-day comment period for short-distance relocations.

Redesignated § 5.40(c)(5) provides exceptions to the OCC's rules of general applicability in part 5 of the OCC's regulations for relocations of a main office or home office to an authorized branch location within city, town, or village limits under paragraph (c)(1) and applies these exceptions to Federal savings associations. Redesignated § 5.40(d) requires Federal savings associations, like national banks, to open a relocated home office within 18 months from the date of OCC approval, unless the OCC grants an extension. Under § 145.95(c), Federal savings associations currently must open or relocate a home office for which they have received approval or non-objection from the OCC within 12 months.

Corporate Title (§ 5.42)

Sections 5.42 and 143.1 set forth standards and procedures for when a national bank or Federal savings association seeks to change its corporate title. Under § 5.42(c), a national bank may change its corporate title without prior notice to the OCC if the new title includes the word ''national'' and complies with other OCC guidance and Federal laws, including laws regarding false advertising and misuse of names. In addition, if the national bank's articles of association specify the corporate title, § 5.42(d)(2) requires the bank to amend the articles in accordance with 12 U.S.C. 21a.

Pursuant to § 143.1(b), a Federal savings association must provide the OCC with prior notice of a change in corporate title. If the OCC does not object within 30 days, the Federal savings association may change its title by amending its charter in accordance with the Federal mutual savings association or Federal stock association charter amendment regulatory procedures in §§ 5.21 or 5.22, respectively. There is no specific statute addressing Federal savings association charter amendments. In addition, § 143.1(a) prohibits a Federal savings association from adopting a title that misrepresents the nature of the institution or the services it offers.

The OCC proposed to amend § 5.42 to include Federal savings associations. The OCC did not receive any comments on § 5.42, and we adopt the amendments as proposed, with one clarifying change. The result of the final rule is to eliminate the advance notice requirement currently applicable to Federal savings association corporate title changes. Instead, Federal savings associations must promptly provide a notice to the appropriate OCC licensing office subsequent to any change in its corporate title. The OCC believes that an after-the-fact notice will provide the OCC with adequate information for regulatory purposes and will reduce burden on Federal savings associations without affecting safety and soundness.

[95] There is no similar statutory provision for Federal savings associations with respect to moving the office to a location within 30 miles of the home office.

[96] 12 U.S.C. 30.

The proposed rule did not incorporate a provision in § 143.1(a) that prohibits a Federal savings association from adopting a title that misrepresents the nature of the institution or the services it offers. The preamble to the proposed rule stated that this statement is implicit in the current national bank rule as well as the proposed rule for both national banks and Federal savings associations and therefore not necessary in the revised rule. However, to emphasize this prohibition, we have amended the final rule to include a statement that the new title must continue to be consistent with § 5.20(f)(2)(i)(F). This provision, added by this final rule, states that, in approving an application to establish a national bank or Federal savings association, the OCC must consider whether the proposed bank or savings association does not have a title that misrepresents the nature of the institution or the services it offers.

The OCC also is making a number of conforming edits. Specifically, the OCC is adding to § 5.42 a cross-reference to §§ 5.21(g) or 5.22(g), the regulatory charter amendment procedures that a Federal mutual savings association or Federal stock association must follow when amending its charter to reflect a corporate title change. This cross-reference simply transfers these requirements from the current Federal savings association rule to the integrated rule. In addition, the OCC is removing the word ''Federal'' in § 5.42(c)(1) to clarify that the new title must comply with all applicable laws, whether Federal or state.

Increases in Permanent Capital by a Federal Stock Savings Association (new § 5.45)

Twelve CFR 5.46 sets out the OCC's rules for national bank changes in permanent capital. These rules implement statutory provisions that establish the processes and requirements for a national bank to increase or decrease its permanent capital (*i.e.,* capital stock and capital surplus), including 12 U.S.C. 51a, 51b, 51b–1, 52, 56, 57, 59, and 60. The statutes require OCC approval for all increases and decreases in permanent capital at a national bank.

The OCC has established a streamlined approval process for most increases in permanent capital by national banks. However, in certain cases, the OCC requires a full application and prior approval. These involve situations in which the OCC has supervisory concerns or the capital contribution is not in cash, thus raising issues of properly valuing the capital increase.

These statutes do not apply to Federal savings associations, and there are not comparable provisions in the HOLA requiring a savings association to receive prior approval for increases to permanent capital. Accordingly, we did not propose to add Federal savings associations to § 5.46. However, we proposed to add a new § 5.45 to require a Federal stock savings association to apply to the OCC and obtain prior approval in the same circumstances in which a national bank would be required to file a full application under § 5.46. Those circumstances are: (1) When the savings association is required to receive OCC approval pursuant to letter, order, directive, written agreement or otherwise, (2) when the savings association is selling common or preferred stock for consideration other than cash, or (3) when the savings association is receiving a material noncash contribution to capital surplus. We did not receive any comments on new § 5.45 and adopt it as proposed, with one technical correction to § 5.45(g)(5) to reference Federal savings associations.

New § 5.45 applies only to Federal stock savings associations. Federal mutual savings associations generally do not raise additional capital, other than through retained earnings, by methods comparable to Federal stock savings associations and national banks. The OCC will review any proposed capital increases at Federal mutual savings associations on a case-by-case basis.

Changes in Permanent Capital by a National Bank (§ 5.46)

As indicated above, 12 CFR 5.46 implements statutory provisions that establish the processes and requirements for a national bank to increase or decrease [97] its permanent capital (*i.e.,* capital stock and capital surplus). We proposed clarifying amendments to § 5.46 regarding increases in capital. We did not receive any comments on these changes and adopt them as proposed. Specifically, the final rule revises paragraph (g)(1) to describe more fully those increases not requiring an application and prior approval and when such increases are considered approved by the OCC. Portions of this provision are currently in paragraph (i)(3) which principally deals with the bank's notification to the OCC that the increase has occurred and the certification of the increase by the OCC. In the revised rule, the discussion of the approval process is included in paragraph (g)(1), and paragraph (i)(3) covers only the bank's notice of increase and OCC certification. The final rule also revises paragraph (i)(3) to make it easier to follow by dividing it into provisions covering the bank's notice of increase and OCC certification. In addition, the final rule describes more fully the certification process and clarifying that the effective date of a capital increase is the date the increase occurred, not the date on which the OCC issues its certification. No changes in substance are intended by these clarifications.

The final rule also makes a small number of technical changes, including revising the section's title to indicate that it applies only to national banks.

Voluntary Liquidation (§ 5.48)

Twelve U.S.C. 181 and 182 establish liquidation standards and procedures for national banks, including requirements for public notice of liquidation plans.[98] Twelve CFR 5.48 implements these statutes and provides that a national bank: (1) May liquidate in accordance with 12 U.S.C. 181; (2) must notify the OCC when it is considering voluntary liquidation; (3) must provide the public notice required by 12 U.S.C. 182, as well as notice to the OCC, after its shareholders have voted to voluntarily liquidate; and (4) must file reports of both condition and progress with the OCC. In addition, § 5.48(f) contains provisions for expedited voluntary liquidations in connection with certain acquisitions and § 5.48(g) addresses a national bank as the acquirer of a liquidating national bank.

There are no statutory requirements similar to 12 U.S.C. 181 and 182 that apply to Federal savings associations. However, § 146.4 contains standards and procedures for a Federal savings

[97] Reductions in capital for Federal savings associations are currently included in the regulations governing capital distributions by Federal savings associations, 12 CFR part 163, subpart E (which will become new § 5.55 in this rulemaking). The current rule and § 5.55 treat a reduction in capital by a Federal savings association that is comparable to a reduction in capital that would be subject to § 5.46 for a national bank (*i.e.,* a reduction other than a dividend from undivided profits) in a similar manner, requiring an application to the OCC.

[98] Twelve U.S.C. 181 sets forth the liquidation standards and procedures with respect to shareholder approval, liquidating agents, progress reports, and OCC examination of a liquidating bank. It requires, *inter alia,* that two-thirds of a national bank's shareholders vote to liquidate in order for a liquidation to proceed. Twelve U.S.C. 182 requires, *inter alia,* that a liquidating national bank's board of directors publish for two months a notice of liquidation in every newspaper published where the bank is located (or nearby, if no paper is published in that city or town). The notice must state that the bank is closing up its affairs and notify creditors to present their claims for payment.

association to dissolve voluntarily. Under these rules, a Federal savings association's board of directors may propose a dissolution plan and submit the plan to the OCC for approval. The OCC may approve the plan, make recommendations concerning the plan, or disapprove the plan. Once approved by both the board of directors and the OCC, the Federal savings association must submit the plan to the savings association's members or shareholders for a vote. If approved by a majority of the members or voting shares, the plan becomes effective. After dissolution, the savings association must provide a certificate evidencing such dissolution to the OCC, after which the OCC will cancel the savings association's charter.[99]

The OCC proposed to amend § 5.48 to incorporate certain provisions from § 146.4, to make § 5.48 applicable to both Federal savings associations and national banks, and to rescind § 146.4. The OCC did not receive any comments on these proposed changes and adopts them as proposed. These changes provide the OCC with additional methods to ensure the safety and soundness of national banks and Federal savings associations. These changes also streamline and improve the process for an OCC-regulated institution to liquidate and thus reduce regulatory burden for the institution.

The amendments result in changes to the liquidation procedures for both types of institutions. Specifically, under § 5.48(b), a Federal savings association must provide preliminary notice to the OCC when it is considering voluntary liquidation and again when its liquidation plan is definite. These requirements currently apply only to national banks. The OCC has found that these advance notices are helpful to the agency in ensuring that the liquidations are planned and executed in a safe and sound manner and in anticipating any issues that may arise as liquidation commences. Also under § 5.48(b), neither a national bank nor a Federal savings association may commence liquidation until the OCC has notified it that the agency does not object to the liquidation plan. Although this requirement is included only in the current Federal savings association regulation, it is consistent with the OCC's current supervisory practice for national banks. The OCC has found that it can identify and communicate supervisory concerns in a timely manner if it reviews liquidation plans prior to the commencement of liquidation and believes that it is appropriate to include this requirement in the final rule.

Section 5.48(d) of the final rule specifies the factors the OCC will consider when reviewing a proposed liquidation plan. Current § 5.48 does not provide any factors and § 146.4 states only that the OCC will approve the plan if it believes dissolution is advisable and the plan is best for all concerned. However, the OCC believes that the additional specificity provided by the final rule assists filers in the preparation of liquidation plans. Specifically, § 5.48(d)(1) in the final rule states that in reviewing a liquidation plan, the OCC will consider the purpose of the liquidation, its impact on the liquidating institution's safety and soundness, and its impact on the institution's depositors, other creditors, and customers. These factors are similar to those that the OCC currently considers when reviewing the merger of a national bank with a nonbank affiliate and substantial changes in the composition of a national bank's assets.[100] Furthermore, the OCC currently uses similar considerations in reviewing voluntary dissolutions of Federal savings associations and bulk transfers by Federal savings associations.[101] These factors provide the OCC with a clear understanding of a plan's potential effect and help to ensure that liquidations are carried out in a safe and sound manner.

Section 5.48(d)(2) states that the OCC also will review a national bank's liquidation plan for compliance with 12 U.S.C. 181 and 182. These statutory requirements do not apply to Federal savings associations and the OCC does not believe it is necessary to extend them to these institutions by regulation. Finally, because of the unique structure of mutual savings associations, revised § 5.48(d)(3) states that the OCC will assess the advisability and effect of liquidation, as well as any alternatives to such action, when a mutual savings association plans to liquidate. As stated above, the OCC believes it must consider these factors in assessing a plan and that it is appropriate to provide affected parties with notice that the OCC will consider these factors.

Sections 5.48(e)(1) and (e)(2) describe the requirements to provide notice of consideration of a plan, to submit a plan, and to receive OCC non-objection before proceeding with a plan. As amended, § 5.48(e)(3) provides that a national bank or Federal savings association's board of directors and its shareholders (or, in the case of a Federal mutual savings association, directors and members) must vote to approve a voluntary liquidation plan. While this requirement is included in § 146.4, only shareholders are required to vote on a liquidation plan under § 5.48(e). The OCC believes that it is prudent and appropriate for a national bank's board of directors also to vote to liquidate because of its direct role in governing the operation of the institution. We also believe that the addition of this requirement reflects existing practices of boards of directors in voluntary liquidations.

Currently, only a national bank is required to notify the OCC of a vote to liquidate. The OCC believes that each institution that it regulates should inform the OCC of such a vote so that the OCC knows the status of the liquidation process. Therefore, the final rule amends § 5.48(e)(3)(A) to state that a national bank or Federal savings association must file a notice with the OCC once the specified parties vote to liquidate. In addition, revised § 5.48(e)(3)(A) requires the bank or savings association to provide notice to depositors, other known creditors, and known claimants. Currently, § 146.4 has no specific notice requirement and, as noted above, § 5.48(e)(1) simply directs a bank to publish notice in accordance with 12 U.S.C. 182. The OCC believes that the public will be best served when notice to depositors, creditors, and claimants is provided and, therefore, the OCC has included this notice in the final rule. Section 5.48(e)(3)(B) makes clear, however, that the statutory vote and notice requirements of 12 U.S.C. 181 and 182 are applicable only to national banks.

The final rule also extends to Federal savings associations the § 5.48(e)(4) and (e)(5) requirements to submit reports of condition and progress to the OCC. The OCC finds these reports useful in determining whether a national bank is following its plan of liquidation and conducting the liquidation in a safe and sound manner. The OCC believes that it is useful to have this same information for a liquidating Federal savings association. In addition, the OCC is requiring the liquidating agent or committee to submit to the OCC a report at the start of liquidation showing the bank's current balance sheet.

Revised § 5.48(e)(6) requires a national bank and Federal savings association to submit a final report of the liquidation to the OCC. This requirement currently exists only for Federal savings associations. However,

[99] These rules do not apply to transactions such as mergers or consolidations, which are currently governed by 12 CFR 163.22, which is replaced by 12 CFR 5.33 by this final rule.

[100] *See* 12 CFR 5.33(g) and 5.53.

[101] *See* 12 CFR 146.4(b) and 163.22(c).

this report allows the agency to confirm that the institution accomplished the liquidation in accordance with the liquidation plan. Furthermore, this requirement is consistent with the OCC's current supervisory practice. Revised § 5.48(e)(6) also specifically requires both national banks and Federal savings associations to return the charter certificate to the OCC.

Sections 5.48(f) and 146.4(b) contain substantively similar provisions for expedited liquidations, and the OCC is consolidating the two provisions by applying § 5.48(f) to Federal stock savings associations. The result of the § 146.4(b) provision that excepts from the voluntary liquidation requirements the transfer of all of a Federal savings association's assets and liabilities to a bank in a business combination transaction remains in effect under § 5.48(f). Consistent with § 146.4(b), however, the final rule does not extend paragraph (f) to Federal mutual savings associations because of the unique ownership structure of those savings associations. The final rule also eliminates § 5.48(g), concerning a national bank as an acquirer of a liquidating national bank, because it does not impose requirements beyond those stated in current law. Finally, the OCC is making other technical changes to clarify § 5.48 where necessary.

Change in Control (§ 5.50)

Twelve CFR 5.50, Change in bank control; Reporting of stock loans, and 12 CFR part 174, Acquisition of control of Federal savings associations, set forth the policy and establish the process for acquisitions of control of national banks and Federal savings associations, respectively. These rules provide the framework for prospective acquirers when they seek to acquire control of a national bank or Federal savings association. Specifically, § 5.50 and part 174 describe the application process and the factors the OCC considers in reviewing the qualifications of the prospective acquirer. The section also addresses the factors that prospective acquirers should consider when exploring possible acquisitions.

While both § 5.50 and part 174 implement the Change in Bank Control Act [102] and many of the substantive requirements are the same, part 174 includes certain substantive requirements that are not included in § 5.50. For example, the rules for Federal savings associations contain many of the same thresholds and control concepts included in § 5.50, but part 174 includes rebuttable control presumptions and rebuttable presumptions of concerted action that are absent in § 5.50.

We proposed to amend 12 CFR 5.50 to make it applicable to both national banks and Federal savings associations and to rescind 12 CFR part 174. As discussed below, we are adopting these amendments as proposed. The amendments to § 5.50 make uniform the treatment of ownership interests held in all national banks and Federal savings associations. The amendments also give guidance to investors contemplating purchasing shares in a national bank or Federal savings association by providing information about what transactions are covered by the requirements and when a notice is necessary. In addition, the amendments clarify the OCC's supervisory expectations for these transactions.

Specifically, the final rule amends § 5.50 to include a number of the definitions and substantive provisions found in part 174. In some instances, these amendments codify substantive differences, as described below.

The final rule also amends the definition section in § 5.50 to add a number of definitions from part 174. These additional terms include ''controlling shareholder,'' ''management official,'' ''company,'' and several definitions that are necessary because we have added Federal savings associations to the rule. The final rule also replaces the definition of ''acquisition'' with that of ''acquire'' from part 174, which contains a more detailed description of transactions that are be covered by the rule. Specifically, the final rule defines ''acquire'' as obtaining ownership, control, power to vote, or sole power of disposition of stock, directly or indirectly or through one or more transactions or subsidiaries, through purchase, assignment, transfer, pledge, exchange, succession, or other disposition of voting stock. The final rule also includes specific examples. Finally, the final rule retains and applies to Federal savings associations the current definition of ''voting securities,'' which replaces the part 174 definition of ''voting stock.'' The change will affect the standard for convertible securities. Currently, part 174 includes as voting stock any security that, upon transfer or otherwise, is convertible into voting stock or exercisable to acquire voting stock where the holder of the convertible security has the preponderant economic risk in the underlying voting stock. Section 5.50, by contrast, defines voting securities to include securities that are immediately convertible into voting securities at the option of the owner or holder. The OCC believes the immediately convertible standard is simpler and easier to apply than the preponderant economic risk standard and provides an appropriate standard for the treatment of securities that are convertible into, or exchangeable for, voting securities.

One commenter requested that the Federal banking agencies make the definitions of ''acting in concert'' and ''immediate family'' uniform. However, this change is outside the scope of our licensing integration and would need to be undertaken on an interagency basis. We will consider this change when reviewing our rules for any possible joint rulemakings in response to other EGRPRA-related amendments.

The amendments to § 5.50 add several presumptions of concerted action. These additional presumptions provide guidance about how and when parties are presumed to be acting in concert for purposes of § 5.50. Currently, an acquirer that proposes to rebut control of a national bank cannot have a representative on the board of directors. The amended rule allows acquirers to rebut a presumption of control in cases where the acquirer will have a representative on the board of directors of the relevant national bank or Federal savings association. This amendment provides greater flexibility for acquirers; in addition, these changes help make the OCC's proposed change in control regulations consistent with the Federal Reserve System's regulations. Additionally, the final rule establishes specific limitations in the rebuttal of control context on the total equity invested, where an acquirer proposes to acquire more than fifteen percent of the national bank's or Federal savings association's voting stock. The final rule also removes certain of the rebuttable presumptions of control with respect to Federal savings associations that are currently set forth in § 174.4(b) and (c), and certain of the rebuttable presumptions of concerted action currently set forth in § 174.4(d).

The final rule does not include the detailed part 174 procedures for rebuttal of control and concerted action, retaining instead the procedures in § 5.50(f)(2)(vi) and applying them to Federal savings associations. The OCC believes that rebuttals are processed in a timely manner under § 5.50, and that the processing procedures established in part 174 are unnecessarily detailed. The final rule also excludes certain other provisions that are included in part 174. For instance, amended § 5.50 retains the current prior notice exemption provisions for acquisition of control as a result of testate or intestate succession. Thus, both national banks and Federal

[102] 12 U.S.C. 1817(j).

savings associations must file a notice and pay the appropriate filing fee within 90 calendar days after the transaction occurs. Previously, persons who acquired control of a Federal savings association as a result of testate or intestate succession needed only to file a notification of acquisition to the OCC within 60 days of the acquisition and provide information requested by the OCC. The OCC believes this change is appropriate because it enables the OCC to review acquisitions of control through testate or intestate succession under the standards set forth in § 5.50. We did not receive any comments on these changes.

Likewise, amended § 5.50 does not include the presumptive disqualifiers from part 174—a list of factors, which, if present, may show a lack of integrity or lack of financial capability to proceed with a proposed transaction. While the OCC believes that the presumptive disqualifiers provide helpful guidance regarding circumstances in which the OCC might consider a change of control notice to be objectionable under the standards for disapproval, the OCC does not consider it necessary to include these detailed provisions in the regulation. The OCC intends to amend the Change in Bank Control Act booklet of the Comptroller's Licensing Manual to address the situations described in the presumptive disqualifiers to the extent it considers appropriate. The amended regulation retains the standards for disapproval set forth in § 5.50(e)(5) and (6).

One commenter recommended that the OCC amend § 5.50 to include a process by which institutions can obtain a binding interpretation of what constitutes a change in control so that institutions will know when a filing is necessary. However, the OCC does not believe a rule change is necessary to provide this information. Institutions can, and often have, asked the OCC for a legal opinion or interpretation of the statute and regulation regarding whether a change in control filing is required based on the facts and circumstances presented. The OCC will continue to provide this information on a case-by-case basis.

Revised § 5.50 also does not include the requirement at § 174.5(a) that acquirers of beneficial ownership exceeding 10 percent of any class of stock of a Federal savings association that do not file a control notice or control rebuttal file a certification of ownership. The OCC believes that the regulatory burden of these filings exceeds the benefits derived from them. We did not receive any comments on this change.

One comment letter, as well as a commenter at the Dallas EGRPRA outreach meeting, noted that the change in control application process allows the regulator to keep the application review period open indefinitely by stating that the filing is not yet informationally complete. These commenters noted that this creates uncertainty, which has a cost to the parties and the affected institutions. One of these commenters requested that there be a definitive cutoff period. However, such a change should be made on an interagency basis. Therefore, we will consider this comment when we review our rules for any possible joint rulemakings in response to other EGRPRA-related amendments.

We received comments at the Los Angeles EGRPRA outreach meeting requesting that we should approve change of control applications within 30 days, rather than the 60-day period that is currently used. We do not agree that this statutory period should be reduced as 60 days is necessary for the OCC to complete our review of the filing.

Finally, the final rule eliminates Appendix A to 174—Rebuttal of Control Agreement. Our rules contain no similar model agreement for national banks, and we do not believe this model is necessary for Federal savings associations.

Change in Directors & Senior Executive Officers (§ 5.51)

Twelve CFR 5.51, Changes in directors and senior executive officers, and 12 CFR part 163, subpart H, Notice of change of director or senior executive officer (§§ 163.550 through 163.590), implement 12 U.S.C. 1831i, which requires certain national banks and Federal savings associations to notify the OCC of a change in a director or senior executive officer. In order to make the treatment of national banks and Federal savings associations more consistent, we proposed to amend § 5.51 by adding language to make it applicable to both national banks and Federal savings associations, making various clarifying changes to the rule, and rescinding 12 CFR part 163, subpart H.

The final rule adopts these amendments as proposed. The resulting changes for both national banks and Federal savings associations, and the comments that we received in response to the proposal, are described below.

Definitions. The definition in § 5.51(c)(1) of a ''director'' for a national bank is not as broad as the definition of the same term in § 163.555 for a Federal savings association. Specifically, the definition in the bank rule includes an advisory director who is authorized to vote on any matters before, or provides more than general advice to, the board of directors. The savings association rule includes an advisory director who votes or provides such advice to a committee of the board in addition to the board of directors. The final rule amends § 5.51(c)(1)(ii) to include this broader definition. As a result, an advisory director of a national bank who may vote on matters before, or provides more than general advice to, any committee of the board of directors is now subject to the requirements of § 5.51. We did not receive any comments on this change.

Section 5.51(c)(2) defines the term ''national bank.'' To provide parallel treatment, the final rule redesignates § 5.51(c)(2) as § 5.51(c)(3) and adds a definition for the term ''Federal savings association'' at § 5.51(c)(2).

''Senior executive officer'' is defined in § 5.51(c)(3) for a national bank and in § 163.555 for a Federal savings association. In addition to minor variances in wording, the definitions have two primary differences. First, the definition in § 163.555 includes an individual serving as president of the institution, while § 5.51(c)(3) does not. To eliminate any ambiguity, the final rule adds ''president'' to the definition of senior executive officer and redesignates § 5.51(c)(3) as § 5.51(c)(4). Second, the definition in § 163.555 specifies that a ''senior executive officer'' also includes any other person identified by the OCC or the OTS in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee, while § 5.51(c)(3) does not specify that the OCC provide notice in writing. The final rule amends redesignated § 5.51(c)(4) to clarify that the notification must be in writing.

We received one comment on this definition, which requested that the Federal banking agencies adopt uniform definitions of ''director and senior officers.'' This change is outside the scope of our licensing integration rulemaking and would need to be undertaken on an interagency basis. We will consider this change when reviewing our rules for any possible joint rulemakings in response to other EGRPRA-related amendments.

Section 5.51(c)(4) defines the term ''technically complete notice'' for a national bank to mean a notice that includes all information required by § 5.51(e)(2), and includes information that may be requested by the OCC after the original submission of the notice. While § 163.555 does not include a

specific definition of this term for a Federal savings association, the term ''technically complete notice'' as defined in the bank rule is generally consistent with the content requirements in § 163.570 and the procedures in § 163.575 governing review of a notice for completeness. The final rule amends this definition to delete the phrase ''original submission of the notice'' and replace it with ''notice'' to allow for subsequent OCC requests for additional information. We did not receive any comments on this change.

Redesignated § 5.51(c)(6) defines the term ''technically complete notice date'' to mean the date on which the OCC has received a technically complete notice for a national bank or Federal savings association. A Federal savings association should be aware of this definition because it triggers the 90-day time period for OCC review and decision discussed below. We did not receive any comments on this change.

''Troubled condition'' is defined in § 5.51(c)(6) for a national bank and in § 163.555 for a Federal savings association. The definitions are substantially similar, and we believe the definition of troubled condition for a national bank encompasses all of the actions included in the definition for a Federal savings association. However, § 5.51(c)(6) provides that a national bank may be designated in troubled condition based on information obtained as a result of an examination, while § 163.555 provides that a Federal savings association may be designated in troubled condition based on information available to the OCC. The language in § 163.555 is broader and thus provides the OCC with greater ability to ensure the safety and soundness of the institutions we supervise. Accordingly, the final rule amends § 5.51(c)(6) by redesignating it § 5.51(c)(7) and by deleting the phrase ''as a result of an examination'' and replacing it with the phrase ''based on information pertaining to such national bank or Federal savings association.'' We did not receive any comments on this change.

Prior Notice. Sections 5.51(d) and (e)(6)(ii) prescribe when a national bank must provide prior notice to the OCC, and §§ 163.560, 163.585(a)(2), and 163.590(b) are the corresponding provisions for a Federal savings association. The description of circumstances requiring prior notice are similar in most respects, but there are differences in the timeframe for prior notice and the treatment of an individual seeking election to the board of directors who has not been nominated by management. Under § 5.51(d), a national bank must provide 90 days prior notice before adding or replacing any director or senior executive officer, or changing the position of a current senior executive officer, if the bank is not in compliance with minimum capital requirements, is otherwise in a troubled condition, or the OCC determines, under section 38 of the FDI Act,[103] that prior notice is appropriate. Section 163.560 requires 30 days prior notice for a Federal savings association if similar prerequisites are met. The OCC may extend this review period under § 163.585(a)(2) for an additional period not to exceed 60 days. Furthermore, in lieu of following the procedures under § 163.590(b), this 30-day notice requirement applies to an individual seeking election to the board of directors who has not been nominated by management.

The final rule applies the national bank standards to Federal savings associations requiring them to provide 90 days prior notice of a new director or senior executive officer if certain prerequisites are met. We believe this longer prior notice is appropriate for both banks and savings associations and conforms with the review of these notices under current OCC practice pursuant to the notice period extension. In addition, under the revised rule, only a Federal savings association may file the notice with the OCC; an individual seeking election to the board of directors of a Federal savings association who has not been nominated by management no longer is allowed to do so. We believe that conducting the necessary review only after an individual has been elected to the board of directors is a more judicious use of OCC resources. The final rule also requires that if the OCC determines that prior notice is required based on review of an agency plan under section 38 of the FDI Act, such determination must be in writing.

We received one comment on the required 90-day notice, which requested that the Federal banking agencies adopt a uniform 30-day prior notice requirement. However, we disagree with this comment. The OCC frequently needs 90 days to make its determination. Therefore, we are adopting the provisions as proposed.

Exceptions to rules of general procedure. For a national bank, under § 5.51(e)(8), notices are not subject to public notice and comment, are not publicly available, and are excepted from certain other generally applicable application processing provisions of part 5. Under part 163, subpart H, and the application processing regulations applicable to Federal savings associations, notices pertaining to Federal savings associations are treated similarly. The final rule amends § 5.51(e)(8) to include Federal savings associations and to clarify that the procedures in § 5.13(c) regarding required information and abandonment of a filing apply to the extent provided for in amended § 5.51(e)(3)(iii) and (e)(7). We did not receive any comments on these amendments.

Content of Notice. Current § 5.51(e)(2) and 163.570 provide, respectively, the requirements governing the content of a notice for a national bank and a Federal savings association. Although § 5.51(e)(2) lists the specific items required and § 163.570 refers to 12 U.S.C. 1817(j)(6)(A) and the Interagency Biographical and Financial Report (IBFR), these requirements are essentially the same, except that § 5.51(e)(2) currently does not require the financial portion of the IBFR for a national bank. Because the financial section of the IBFR provides information that is useful and relevant to the disapproval standards and may not be available to the OCC in the information currently required to be provided, the final rule revises § 5.51(e)(2) to require the submission of the financial portion of the IBFR, except when the OCC determines in writing that this information is not required.

The final rule also adds language to § 5.51(e)(2) to permit the OCC to require additional information and to require or accept other information in place of the information required by this paragraph. This language, which provides valuable flexibility to the OCC, is currently included in § 163.570(a)(3) and (b). In addition, the final rule adds language to § 5.51(e)(2) to clarify how to calculate the three-year exception for providing fingerprints.

We did not receive any comments on these changes.

Request for additional information. The final rule amends § 5.51(e)(3), redesignated as § 5.51(e)(3)(i), to remove the qualification that the OCC's request for information be in writing ''where feasible'' and instead requires that the OCC's request must always be in writing and that the OCC must provide an explanation of why the information is needed. In addition, the final rule adds a new § 5.51(e)(3)(ii) to provide that a national bank or Federal savings association that cannot provide the requested information within the time specified by the OCC may request that the OCC suspend processing of the notice and that the OCC, in its discretion, may either grant or deny the

[103] 12 U.S.C. 1831o.

request in writing, and if granted, specify the time period during which the information must be provided. This provision is similar to § 163.575(b). The final rule also adds new § 5.51(e)(3)(iii), which provides that if a national bank or Federal savings association fails to provide the requested information within the time specified in § 5.51(e)(3)(i) or in the OCC's grant of the suspension request pursuant to § 5.51(e)(3)(ii), the OCC may either deem the filing abandoned under § 5.13(c) or review the notice based on the information provided. This provision is included in § 163.575(b). Based on our supervisory experience, it is appropriate to apply these specific consequence for failing to provide such additional information to national banks in addition to Federal savings associations. We did not receive any comments on these changes.

Notice of disapproval/notice of intent not to disapprove. Sections 5.51(e)(4) and (5) describe the requirements governing a notice of disapproval and a notice of intent not to disapprove for a national bank, and §§ 163.580 and 163.585 are the equivalent provisions for a Federal savings association. Although there are minor differences in wording, they are substantively the same. Accordingly, the final rule amends § 5.51(e)(4) and (5) to include Federal savings associations. In addition, the final rule amends § 5.51(e)(4) and (5) to clarify that the notice of disapproval and the notice of intent not to disapprove must be in writing.

The final rule also clarifies in § 5.51(e)(5) that the OCC will provide the notice of intent not to disapprove to the individual in addition to the institution. This change clarifies an ambiguity and makes this provision consistent with other provisions in § 5.51.

Finally, the final rule revises § 5.51(e)(5) to require that an individual must satisfy all applicable legal requirements to begin service as a director or senior executive officer after receiving a notice of intent not to disapprove.

We did not receive any comments on these changes.

Waiver. Section 5.51(e)(6) prescribes the waiver procedure that allows an individual to serve as a director or senior executive officer of a national bank prior to filing a notice. Section 163.590 prescribes corresponding procedures for a Federal savings association. Although these provisions are similar in terms of standards for granting a waiver and requiring that a notice is filed within a specified time period after the waiver has been granted, the savings association rule does not detail the length of service of such an interim position. The final rule applies § 5.51(e)(6) to savings associations, reorganizes and renumbers § 5.51(e)(6), and makes the changes described below. We did not receive comments on any of these changes.

First, under redesignated § 5.51(e)(6)(i)(B), the final rule clarifies that the OCC's finding in support of the waiver must be in writing, which is the OCC's current practice and which is included in the savings association rule.

Second, § 5.51(e)(6) provides that the OCC may waive the prior notice requirement if delay could harm the national bank or the public interest, or if other extraordinary circumstances justify waiving the requirement. Under § 163.590(a), the OCC may grant a waiver if delay would threaten the safety and soundness of the savings association, would not be in the public interest, or if there are other extraordinary circumstances. The final rule revises § 5.51(e)(6) to incorporate the safety and soundness standard and modifies it slightly from what is included in the savings association rule. Specifically, as amended, the OCC may grant a waiver if delay could adversely affect the safety and soundness of the national bank or Federal savings association, would not be in the public interest, or other extraordinary circumstances justify the waiver.

Third, both § 5.51(e)(6) and § 163.590 provide that if the OCC grants a waiver, the national bank must file the required notice within the time period specified in the waiver. The final rule amends redesignated § 5.51(e)(6)(i)(C) to clarify that such notices must be technically complete within this specified time period.

Fourth, the final rule amends redesignated § 5.51(e)(6)(i)(D) by changing the alternative outcomes that may occur after a waiver is granted and the proposed individual has assumed the position on an interim basis. Section 163.590 does not include similar provisions. Under the current bank rule, if a proposed director or senior executive officer who is serving under a waiver receives notice of disapproval, that person could continue to serve pending resolution of an appeal. We believe it is not in the best interest of the national bank or Federal savings association, and would be unsafe or unsound, to allow a disapproved individual to continue to serve pending an appeal. Therefore, amended § 5.51(e)(6)(i)(D)(*2*) requires an individual who is serving on an interim basis and receives a notice of disapproval to resign immediately from the board. This person may assume the position on a permanent basis only if the notice of disapproval is reversed on appeal and all other applicable legal requirements are satisfied.

Section 5.51(e)(6) also provides that if the required notice is not filed within the time period specified in the waiver, the proposed individual must resign his or her position. Thereafter, the individual may assume the position on a permanent basis only after the national bank receives a notice of intent not to disapprove, the review period elapses, or a notice of disapproval has been overturned on appeal. Section 163.590 does not include a similar provision. The rule also provides that a waiver does not affect the OCC's authority to issue a notice of disapproval within 30 days of the expiration of such waiver. The final rule clarifies in § 5.51(e)(6)(i)(E) that the individual may assume the position under these circumstances only after a technically complete notice has been filed and all other applicable requirements are satisfied. Furthermore, the final rule specifies in § 5.51(e)(6)(i)(D)(*3*) that the review period elapses when the OCC fails to act within 90 calendar days after submission of a technically complete notice and the individual satisfies all other legal requirements. As a matter of practice, the OCC has taken the position that waiver of prior notice does not affect the general 90-day review period and this amendment codifies this position in our rule.

The final rule also clarifies in § 5.51(e)(6)(i)(D)(*1*) that following receipt of a notice of intent not to disapprove the individual may assume the position on a permanent basis if all other applicable legal requirements are satisfied.

Section 5.51(e)(6)(ii) prescribes the requirements for an automatic waiver of the prior notice requirement for a national bank, and § 163.590(b) is the corresponding provision for a Federal savings association. Specifically, § 5.51(e)(6)(ii) provides that if a new director not proposed by management is elected at a shareholder meeting, a waiver of the prior notice requirement is granted automatically and the elected individual may begin service as a director. However, the national bank must file the required notice as soon as practical and not later than seven days from the date the individual is notified of the election. This provision differs from § 163.590(b), which requires the individual, and not the institution, to file the notice. The final rule applies

§ 5.51(e)(6)(ii) to Federal savings associations.

Commencement of Service. For a national bank, § 5.51(e)(7) prescribes when a proposed individual may assume the office. Section 163.585 is the corresponding provision for a Federal savings association. Under § 5.51(e)(7), an individual may begin service at the end of the OCC's review period unless the OCC issues a notice of disapproval or the OCC deems the notice to be abandoned because the bank does not provide additional requested information. Under § 163.585, an individual may begin service at the end of the 30-day review period (or, if extended, the 90-day review period) unless the OCC issues a notice of disapproval, or when the OCC notifies the bank in writing of its intent not to disapprove.

The final rule adds new § 5.51(e)(7)(i) to clarify that an individual may assume the office on a permanent basis prior to expiration of the review period only if the OCC notifies the national bank or Federal savings association in writing that the OCC does not disapprove the proposed director or senior executive officer. As indicated above, this provision is included in § 163.585(b). The final rule also adds conforming language in § 5.51(e)(7)(i), redesignated as § 5.51(e)(7)(ii)(A), to provide that the OCC's notice of disapproval must be in writing. We note that redesignated § 5.51(e)(7)(ii)(B) specifically prohibits individuals from beginning service at a Federal savings association, in addition to at a national bank, if the OCC deems the application abandoned. While § 163.575 applies the concept of abandonment to a Federal savings association when a notice is not complete, § 163.585 does not specifically prohibit individuals from serving if the OCC deems the application abandoned. We did not receive any comments on this change.

Appeal. Section 5.51(f) prescribes the applicable procedures for a national bank or a proposed individual to appeal a notice of disapproval. There is no equivalent rule in part 163, subpart H for a Federal savings association. Accordingly, under § 5.51(f) as amended by this final rule, this appeal process is available to both a Federal savings association and the proposed individual.

We received one comment related to the appeal of notices of disapproval. That commenter requested that all of the Federal banking agencies' rules include a procedure for the appeal of the denial of a notice for a change in a director or senior executive officer. However, this change is unnecessary for the OCC rules because, as indicated above, the OCC's current national bank rule already includes an appeals process and the OCC in this final rule applies that process to Federal savings associations.

Technical changes. The final rule makes minor technical changes throughout § 5.51. For example, § 5.51 uses the terms ''individual'' and ''person'' interchangeably and uses the terms ''lapse,'' ''end,'' and ''expire'' interchangeably. To promote consistency and conform to the language in 12 U.S.C. 1831i, the final rule replaces the word ''person'' with ''individual'' and uses the word ''expire'' or ''expiration.'' To promote consistency and avoid confusion, the final rule adds the word ''calendar'' before the word ''days.'' Finally, in the definition of ''national bank'' in § 5.51(c)(2), the final rule deletes the reference to § 5.3(j) because it is obsolete. We did not receive any comments on these changes.

Change in Address (§ 5.52)

Twelve CFR 5.52 requires a national bank to submit a written notice to the OCC if its main office or post office box address changes. Twelve CFR 145.91(b) requires a Federal savings association to notify the appropriate OCC licensing office if it changes the permanent address of its home office, with certain exceptions. The rules are substantially similar. In order to consolidate these rules and make them consistent, the OCC proposed amending § 5.52 to make it applicable to both national banks and Federal savings associations and to rescind § 145.91(b). The OCC did not receive any comments on the proposed changes and adopt the amendments as proposed. As previously discussed in this preamble with respect to § 5.40, the OCC uses the term ''main office'' when discussing a national bank and ''home office'' when discussing a Federal savings association.

As noted above, the current national bank and Federal savings association notice requirements are subject to certain exceptions. Specifically, § 5.52(b) currently provides that a national bank is not required to provide notice of a main office or post office box address change if the change results from a transaction approved under part 5. Section 145.91(b) provides that a Federal savings association is not required to provide a change of address notice if the association submitted an application or notice to relocate or establish a new home or branch office pursuant to §§ 145.93 and 145.95. The OCC is making these provisions consistent by providing in the final rule that neither a national bank nor a Federal savings association is required to file a notice if it submitted a notice under § 5.40(b), which addresses a relocation of a main office or home office. In addition, a Federal savings association is not required to file a notice for a transaction approved under part 5, consistent with the current treatment for national banks.

We note that under current Federal savings association rules, highly rated savings associations are exempt from the §§ 145.93 and 145.95 provisions requiring an application or notice for the relocation or establishment of a new home or branch office, and therefore must file a change in address notice under 145.91. As a result of the integration of §§ 145.93 and 145.95 into § 5.40 with respect to a relocation of a home office and the concurrent removal of the exemption for highly rated savings associations, all savings associations file an application or notice for the relocation of a home office pursuant to § 5.40 and therefore are exempt from the change in address notice under § 5.52.

Finally, § 145.91(a) provides that all operations of a Federal savings association are subject to direction from the home office. There is no equivalent provision for national banks. The OCC believes this provision to be unnecessary and has not included it in revised § 5.52.

Change in Asset Composition (§ 5.53)

Twelve CFR 5.53 sets out the OCC's rules addressing changes in asset composition for national banks. It requires a national bank to apply to the OCC and obtain prior written approval before changing the composition of all, or substantially all, of its assets (1) through sales or other dispositions, or, (2) having sold or disposed of all or substantially all of its assets, through subsequent purchases or other acquisitions or other expansions of its operations. It contains exceptions for changes in asset composition that occur in connection with an enforcement action, a liquidation under 12 CFR 5.48, or a bank's ordinary and ongoing business of originating and securitizing loans.

Twelve CFR 163.22(c) and (h)(2) set out the OCC's rules addressing changes in asset composition, as well as several other types of changes in business, for Federal savings associations. Section 163.22(c) requires a Federal savings association to file either an expedited treatment notice (which is a form of application) or a standard treatment application, as specified in § 163.22(h)(2), for transactions described in § 163.22(c). Section 163.22(c)

includes: (1) Purchases or sales or other transfers of assets in bulk not made in the ordinary course of business, unless the transaction is a combination with, or the assumption of deposits from, another insured depository institution and is subject to the Bank Merger Act, (2) assumptions or sales or other transfers of savings account liabilities, deposit accounts, or other liabilities in bulk not made in the ordinary course of business, unless the transaction is a combination with, or the assumption of deposits from, another insured depository institution and is subject to the Bank Merger Act, and (3) combinations with a depository institution other than an insured depository institution.[104]

The OCC proposed to combine these rules in an expanded § 5.53 by including some additional requirements for approval of asset transfers based on § 163.22(c).[105] We also proposed to make clarifications in some of the existing provisions of § 5.53 and to revise the rule's layout to make it easier to follow. Finally, as a result of these changes and others in this rulemaking, we proposed to remove 12 CFR 163.22(c) and (h)(2).[106] The OCC did not receive any comments on the proposed changes, and adopt the amendments as proposed, with one technical correction that is described below.

Specifically, the final rule revises § 5.53(b), the scope section, to make it a single sentence and moves the extended description of covered transactions and exceptions into a new definition section. In § 5.53(c)(1)(i) of the definition section, the final rule amends an existing provision to clarify that a sale of all or substantially all assets in a series of transactions is covered, not only the sale of assets in a single transaction to one purchaser.

The final rule adds two provisions in the definition that will bring some of the asset transfers that are covered by § 163.22(c) within the scope of § 5.53. Section 163.22(c) includes all purchases or sales or other transfers of assets in bulk not made in the ordinary course of business, unless the transaction is a combination with, or the assumption of deposits from, another insured depository institution and is subject to the Bank Merger Act. The final rule adds some, but not all, such transfers to § 5.53. The existing national bank rule at § 5.53(b) and (c)(1)(ii) (which this rulemaking includes at § 5.53(c)(1)(ii)) includes asset purchases only after a prior asset sale. The final rule adds: (1) Any other asset purchases or other expansions of business that are part of a plan to increase the size of the bank or savings association by more than 25 percent in one year; and (2) any other material increase or decrease in the size of the national bank or Federal savings association or a material alteration in the composition of the types of assets or liabilities of the national bank or Federal savings association (including the entry or exit of business lines), on a case-by-case basis, as determined by the OCC.

The amended rule advises banks and savings associations that are contemplating transactions that may constitute a material change to consult the appropriate OCC supervisory office and sets out factors the OCC will use in determining whether an application is required. The intent of this provision is to establish a mechanism for requiring prior approval of significant changes when the OCC considers it necessary for supervisory reasons without establishing specific application criteria in the rule that would require banks and savings associations to file applications in other cases.

The net effect of these changes on national banks is to require applications for approval in more situations than under current § 5.53, but these additional situations likely already would involve discussions between the bank and its supervisory office. The net effect of these changes on Federal savings associations will be fewer situations in which applications for approval are required than are now required under current § 163.22(c).

Section 5.53 has three exceptions to the requirement to file an application. An application under § 5.53 is not required if the bank is making the asset change in response to direction from the OCC (*e.g.,* in an enforcement action), if the asset change is part of a voluntary liquidation under 12 U.S.C. 181 and 182 and 12 CFR 5.48 that will be completed within one year, or if the asset change occurs as a result of a bank's ordinary and ongoing business of originating and securitizing loans. The final rule amends § 5.53 to provide that the exception for asset changes that are part of a voluntary liquidation applies only if the OCC has notified the bank or savings association that it has no objection to the liquidation plan. We note that the final rule amends § 5.48, Voluntary liquidation, to require this non-objection. We also note that the proposed rule required OCC ''approval'' of the liquidation plan as the prerequisite for this exception, and this final rule makes the terminology consistent with § 5.48. The final rule also adds an exception for changes in assets that are subject to OCC approval under another application to the OCC. In such cases, an additional application under § 5.53 is not required. Under the current rule, this exception is only implied.

Section 5.53 currently does not have a provision granting expedited review of applications by eligible banks. Section 163.22(c) covers a broader range of transactions than § 5.53, and § 163.22(c) and (h)(2) provided for expedited treatment of bulk transfer filings if all the participating Federal savings associations meet the conditions for expedited treatment. The OCC believes the transactions covered under § 5.53 will always be significant enough that expedited review is not appropriate. Therefore, the final rule does not include expedited review in § 5.53.

Finally, the final rule revises the approval requirement provision in § 5.53(d)(1) to eliminate language that is now covered by the term ''substantial asset change'' and revises the manner in which the review factors are set out in § 5.53(d)(2)(i) to be the same as the similar factors in 12 CFR 5.33.

Capital Distributions by Federal Savings Associations (new § 5.55)

Subpart E of part 163, Capital distributions, sets forth the procedures and standards for all capital distributions made by a Federal savings association. Section 5.46, Changes in permanent capital, and subpart E of part 5, Payment of dividends, describe the procedures and standards relating to a transaction resulting in a change in a national bank's permanent capital and declaration and payment of national bank dividends, respectively. Although part 163, subpart E and § 5.46 and subpart E of part 5 cover similar transactions, they are structured differently and apply in different ways to Federal savings associations and national banks. Therefore, the OCC did not propose to integrate these rules. However, in order to include all OCC licensing-related rules in part 5, we proposed to move the provisions contained in subpart E of part 163 to part 5 as new 12 CFR 5.55, update the cross-references in §§ 192.510(c)(1) and 192.520(c) to reflect the new § 5.55, and to make other conforming changes.

In addition, we proposed including in new § 5.55 filing procedures based on provisions in part 5 regarding eligible

[104] Transfers and combinations with insured depository institutions that are subject to the Bank Merger Act are covered by other parts of § 163.22.

[105] We are addressing the provisions in § 163.22(c) regarding combinations and transfers of deposits and other liabilities in revised 12 CFR 5.33 on business combinations, discussed elsewhere in the preamble.

[106] Other provisions of this rulemaking remove the remaining provisions of § 163.22.

savings associations and expedited review. These part 5 procedures result in filing requirements similar to those in subpart E of part 163. However, as described in the discussion of the part 5, subpart A, definition of ''eligible bank or eligible savings association'' elsewhere in this preamble, because the eligibility requirements in part 5 and in the current Federal savings association rules are not identical, the part 5 eligibility requirements for expedited review could affect which savings associations qualify for the expedited process. We also proposed clarifying the provisions regarding the filing of a notice with the OCC and Federal Reserve Board in proposed § 5.55(e)(2)(iii), (2)(iv) and (4) to more precisely describe the requirements.

We proposed no further substantive changes to the capital distributions rule for Federal savings associations.

The OCC did not receive any comments on proposed § 5.55. Therefore, we adopt these amendments as proposed.

Subordinated Debt (New § 5.56)

The OCC currently has separate rules for subordinated debt issued by national banks and Federal savings associations (12 CFR 5.47 and 12 CFR 163.81, respectively). Because of the differences and complexity of these rules, we did not propose to integrate them in this rulemaking at this time. However, in order to include all OCC licensing-related rules in part 5, we proposed to move § 163.81 to part 5 as new 12 CFR 5.56 and update the cross-reference in § 193.101(c) to reflect the new § 5.56.

In addition, we proposed to include in new § 5.56 filing procedures based on provisions in part 5 regarding eligible savings associations and expedited review that would result in filing requirements similar to those in § 163.81. However, as described in the discussion of the part 5, subpart A, definition of ''eligible bank or eligible savings association'' elsewhere in this preamble, because the eligibility requirements in part 5 and in the current Federal savings association rules are not identical, the part 5 eligibility requirements for expedited review could affect which savings associations qualify for the expedited process.

We did not propose any other substantive changes to rules on subordinated debt for Federal savings associations.

The OCC did not receive any comments on proposed § 5.56, and we adopt it as proposed, with the following technical amendments. First, the final rule replaces the term ''non-objection,'' a carryover from § 163.81, with the term ''approval'' in § 5.56, which is the term used in part 5.

Second, because the effective date for the Basel III revisions to our capital rules took effect on a staggered basis, the proposed rule contained provisions specifically applicable to non-advanced approaches Federal savings associations, which did not need to comply with the revised capital rules until January 1, 2015. However, as this final rule is effective after this date, these specific provisions are no longer necessary, and the final rule removes them.

Pass-Through Investments by Federal Savings Associations (New § 5.58)

National banks and Federal savings associations may make, directly or through an operating subsidiary, non-controlling investments (the national bank term) or pass-through investments (the Federal savings association term) in entities pursuant to their respective authority under 12 U.S.C. 24 (Seventh) (national banks) and 12 U.S.C. 1464(c) (Federal savings associations) and other statutes. Twelve CFR 5.36 describes the procedures for making these non-controlling investments for national banks. Twelve CFR 160.32(a) addresses the authority of Federal savings associations to make pass-through investments, while § 160.32(b) and (c) describe the procedures for making pass-through investments for Federal savings associations.

With respect to Federal savings associations, § 160.32(a) codifies the authority of Federal savings associations to make pass-through investments in certain entities that hold only assets and engage only in activities permissible for Federal savings associations. When making the pass-through investment, a Federal savings association must comply with all the statutes and regulations that would apply if it were engaging in the activity directly. For example, a Federal savings association must aggregate a proportionate share of its pass-through investment in an entity with the assets the Federal savings association holds directly in calculating its investment limits.[107]

Section 160.32(b) provides that a Federal savings association may make certain qualifying pass-through investments without prior notice to the OCC (a ''no-notice procedure'') in any entity that is a limited partnership, an open-ended mutual fund, a closed-end investment trust, a limited liability company, or an entity in which the Federal savings association is investing primarily to use the company's services. To qualify for this no-notice procedure, the investment must satisfy the conditions set forth in § 160.32(b): (1) the investment is not more than 15 percent of the association's total capital, (2) the book value of the association's aggregate pass-through investments does not exceed 50 percent of the association's total capital, (3) the investment does not give the association direct or indirect control of the company, and (4) the association's liability is limited to the amount of the investment. Section 160.32(c) requires a Federal savings association to provide the OCC with 30 days advance written notice prior to making any pass-through investment that does not meet these no-notice standards. The notice is a form of application and may become a standard application if the OCC notifies the filer that the investment presents supervisory, legal, or safety and soundness concerns. Section 160.32 does not specify the content of the notice or application, as does § 5.36.

The OCC proposed to add a new § 5.58 to part 5 to make its filing requirements for non-controlling and pass-through investments consistent. New § 5.58 is based on § 5.36 and subjects Federal savings association pass-through investments to filing requirements very similar to those applicable to national banks. The OCC also proposed amending § 160.32(b) to become a cross-reference referring Federal savings associations to the new rule and removing § 160.32(c). We retained § 160.32(a) without change.

We did not propose to add Federal savings associations to § 5.36 at this time because of differences in the respective statutory authorities, the regulations implementing them, and their interpretation.

The OCC did not receive any comments on new § 5.58 and the amendments to § 160.32, and we adopt these provisions as proposed, with one technical amendment that corrects the cross-reference in § 160.32. New § 5.58 is described below.

The scope section at § 5.58(b) refers to the authority of Federal savings associations to make equity investments, including pass-through investments, under 12 U.S.C. 1464 and other statutes. It also reflects that the authority to make a pass-through investment subject to §§ 5.58(b) and 160.32(a) is in addition to authorities to make investments subject to §§ 5.35, Bank service company investments; 5.37, Investment in bank premises; 5.38, Operating subsidiaries; and 5.59, Service corporations.

[107] *See* 12 CFR 160.32(a) (noting, as an example, aggregation for purposes of the non-residential real estate loan limits under section 5(c) of the HOLA).

Paragraph (c) of § 5.58 requires a Federal savings association to file a notice or application for a pass-through investment when required by § 5.58. Section 5.58(d) contains definitions used in the section. The definitions are like those in § 5.36(c).

Paragraph (e) of § 5.58 mirrors § 5.36(e) and provides that a well capitalized, well managed Federal savings association may make certain pass-through investments, directly or through its operating subsidiary, in certain entities [108] by filing a written notice with the OCC no later than 10 days after making the investment. This after-the-fact notice procedure is available if the activity conducted by the enterprise is on the list of activities eligible for a notice filing for operating subsidiaries under revised § 5.38, or if it is substantially the same as an activity that has been previously approved for a Federal savings association (or its operating subsidiary) in published OCC precedent, including published former OTS precedent, and is conducted on the same terms and conditions that apply to the activity approved in that precedent. This notice must contain the information enumerated in § 5.58(e), including: (1) A description of the structure of the investment and the types of activities conducted by the enterprise in which the bank is investing, (2) how the activity comports with the activities listed in § 5.38 or OCC precedent, (3) a certification that the savings association is well managed and well capitalized at the time of the investment, (4) how the savings association will prevent the enterprise from engaging in impermissible activities, (5) a description of how the investment is convenient and useful to the savings association and not a passive investment, (6) a certification that the savings association's loss exposure is limited and that it does not have unlimited liability for the obligations of the enterprise, and (7) a certification that the enterprise agrees to be subject to OCC supervision and examination as permitted under certain Federal statutes.

If a Federal savings association is not well capitalized and well managed or if the activity conducted by the enterprise does not qualify for the after-the-fact notice procedure, the savings association is required to apply to the OCC and receive prior approval for the non-controlling investment under § 5.58(f), which mirrors § 5.36(f). The application must satisfy the other conditions enumerated in proposed § 5.58(e).

Section 5.58(g)(1), based on § 5.36(g)(1), provides for an expedited notice procedure for pass-through investments in entities holding assets in satisfaction of debts previously contracted. Under § 5.58(g)(2), based on § 5.36(g)(2), a Federal savings association is not required to file a notice or application under § 5.58 when acquiring a non-controlling investment in shares of a company through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted.

The requirement for Federal savings associations to follow filing requirements for pass-through investments similar to the filing requirements for national bank non-controlling investments does not affect the authority of Federal savings associations to make pass-through investments in entities that engage only in activities permissible for Federal savings associations. In addition, § 5.36 permits national banks to make non-controlling investments greater than 25 percent of the company's equity. Under § 5.58, Federal savings associations are permitted to do the same. Such an investment, however, constitutes ''control'' under the definition used in 12 U.S.C. 1828(m) that is applicable to Federal savings associations, which makes the enterprise a subsidiary of the association for purposes of section 1828(m) and triggers a filing with the OCC pursuant to section 1828(m).[109] Accordingly, § 5.58(f)(2) provides that, in all cases in which a Federal savings association proposes to invest in an enterprise that would be a subsidiary of the Federal savings association for purposes of section 1828(m) and would not be an operating subsidiary or service corporation, the Federal savings association must submit an application for approval to the OCC, similar to the application required under § 5.58(f)(1) for investments that do not qualify for the notice procedure.

Section 5.58 also changes the filing requirements for Federal savings associations' non-controlling investments. Some pass-through investments could meet the requirements for the after-the-fact notice procedure, and the Federal savings association would need to file only the after-the-fact notice, not an application required under § 160.32(c). However, some non-controlling investments that currently may qualify for the no-notice procedure under current § 160.32(b) will require a filing under § 5.58. In this regard, we understand the no-notice procedure under current § 160.32(b) was primarily used for investments in investment companies that held assets permissible for a Federal savings association to hold directly. Section 5.58(h) continues the no-notice procedure for such investments by Federal savings associations.[110] In addition, some investments that may have qualified for the no-notice procedure may be eligible for the after-the-fact notice of § 5.58(e). Thus, the OCC believes there should not be a substantial impact of this change on Federal savings associations, since the final rule continues the most common exception to the application requirement in § 160.32, and other pass-through investments may qualify for after-the-fact filing.

Service Corporations of Federal Savings Associations (New § 5.59)

Section 5(c)(4)(B) of the HOLA [111] authorizes Federal savings associations to invest in service corporations. There is no similar authority for national banks. OCC rules addressing service corporations of Federal savings associations (as well as operating subsidiaries of Federal savings associations) are currently set forth at 12 CFR part 159 (Subordinate organizations). The OCC proposed to remove these provisions of part 159 and create a new § 5.59 based on part 159 that would address only Federal savings association service corporations.[112] This new part sets forth the characteristics of Federal savings association service corporations, the requirements applicable to such service corporations, and the filing requirements that apply to

[108] Under new § 5.58(d)(1), a Federal savings association may invest in an ''enterprise'' that is a corporation, limited liability company, partnership, trust, or similar business entity.

[109] A ''non-controlling'' investment is not defined in § 5.36. It is generally understood to mean an investment other than one that would constitute ''control'' under the OCC's operating subsidiary regulation, § 5.34, which is a different standard than the one applicable for section 1828(m). Because of this general understanding, national banks' non-controlling investments have not, in general, exceeded 50 percent of an enterprise's equity.

[110] Currently, national banks similarly are not required to file under § 5.36 for such investments. The rule contains exceptions to the § 5.36 filing requirements when the bank is required to make the investment under another regulation implementing a specific statutory authority. One of those exceptions is for investments made under 12 CFR part 1. Investments by national banks in pooled investment vehicles are covered by 12 CFR 1.3(h). Thus, a national bank is not required to file under § 5.36 for such investments. Section 5.58(h) will provide the same exception to the filing requirement for Federal savings associations.

[111] 12 U.S.C. 1464(c)(4)(B).

[112] As noted elsewhere in this preamble, the final rule includes a new § 5.38 that addresses Federal savings association operating subsidiaries. As a result, all of part 159 will be removed.

a Federal savings association's establishment or acquisition of a service corporation or its commencement of new activities in an existing service corporation.

The OCC received one comment on new § 5.59, relating to the proposed annual reporting requirement. The OCC is amending its proposal to reflect this comment, and adopting the remaining provisions of § 5.59 as proposed. Revised § 5.59 and this comment are described below.

The current service corporation regulation provides that, when required by section 18(m) of the FDI Act, a Federal savings association must file a notice under 12 CFR part 116 at least 30 days before establishing or acquiring a subsidiary or engaging in a new activity in a subsidiary.[113] The regulation defines a ''subsidiary'' as a subordinate organization directly or indirectly controlled by a Federal savings association.[114] Accordingly, under the current regulation, a Federal savings association is not required to file a service corporation application if the association proposes to make a non-controlling investment in a service corporation.

New § 5.59 amends the service corporation regulation to require that a Federal savings association file with the OCC before acquiring or establishing any service corporation, including one that it would not control. The OCC believes that this requirement is more consistent with the underlying statute, 12 U.S.C. 1828(m), and also is more prudent from a regulatory standpoint, because it enables the OCC to review the proposed establishment or acquisition of all service corporations, not merely ones the Federal savings association controls.[115] This ability to review is particularly important because service corporations may engage in a broader range of activities than Federal savings associations, and because Federal savings associations may make sizable investments in service corporations (the aggregate statutory limit for all service corporation investments is two percent of assets or three percent, provided that any amount in excess of two percent consists of community development investments). The OCC believes that the amendment will not materially increase the regulatory burden on Federal savings associations because, in most cases, the notice process is not lengthy and information requirements are not extensive.

As a result of this amendment, some Federal savings associations may currently have non-controlling investments in service corporations, for which the Federal savings association did not submit a filing under 12 U.S.C. 1828(m), but for which, if the Federal savings association made the service corporation investment now, an application would be required. The OCC does not believe that an application should be required in order for a Federal savings association to retain such investments, many of which may have occurred several years ago, and did not intend this result in the proposed rule. Accordingly, the final rule includes new paragraph (e)(10), which provides that where a Federal savings association made a non-controlling investment in a service corporation before May 18, 2015, the date of **Federal Register** publication of this final rule, but did not submit a filing under 12 U.S.C. 1828(m), the Federal savings association is not required to file a service corporation application with respect to such investment, provided that the Federal savings association does not acquire additional stock or similar interests in the service corporation and the service corporation does not engage in any activities in which it was not engaged as of May 18, 2015. We note that we have changed the original date included in the proposed rule, June 10, 2014, the date of publication of the proposal, to the date of publication of the final rule, as we believe this is the more appropriate date on which to grandfather such existing investments.

The current service corporation regulation uses the definition of ''control'' in 12 CFR part 174. Instead, the final rule states, in § 5.59(d)(1) that ''control'' has the meaning set forth in 12 U.S.C. 1841, the Bank Holding Company Act (BHC Act), and the Federal Reserve Board's regulations thereunder, at 12 CFR part 225. The term ''control'' as it relates to the filing requirement, is set forth in section 18(m)(1) of the FDI Act. The FDI Act defines control by cross-referencing the definition of the term in the BHC Act, at 12 U.S.C. 1841.[116] Accordingly, the OCC believes that the appropriate definition of control is the BHC Act definition. The OCC does not believe that this definitional change will have a significant impact on Federal savings associations.[117]

Section 5.59(e)(5) explicitly states that service corporations may be organized in any organizational form that provides the same protections as the corporate form of organization, including limited liability. This provision is consistent with the OTS's intent in promulgating 12 CFR part 559, the predecessor to part 159,[118] and is consistent with OTS precedent. In amending the service corporation regulation to provide explicitly that service corporations were not required to be in the corporate form, the OTS stated that it was following its standard practice of interpreting the HOLA in a manner that does not elevate form over substance and that the HOLA authorization to invest in service corporations should be read ''to permit any organizational form that provides the same basic protections as the corporate form of organization.'' [119]

The current service corporation regulation provides that state law applies to a service corporation regardless of whether state law applies to the parent Federal savings association.[120] The OCC previously has amended its regulations to reflect the preemption provisions of the Dodd-Frank Act.[121] Accordingly, this rulemaking does not include this statement in § 5.59. This result does not effect a substantive change from the current regulations.

Twelve CFR 163.161, Management and financial policies, includes a requirement that service corporations must be well managed and operate safely and soundly. That section also provides that service corporations must pursue financial policies that are safe and consistent with the purposes of savings associations and that service corporations must maintain sufficient liquidity to ensure their safe and sound operation. These requirements addressing service corporations are more appropriately included in the service corporation regulations, and the final rule includes them at § 5.59(e)(7).

Section 5.59(e)(8) retains the current rule's provisions regarding separate

[113] 12 CFR 159.11.

[114] 12 CFR 159.2.

[115] The OCC is retaining the requirement that, with respect to an existing service corporation that proposes to engage in new activities, a Federal savings association files with the OCC only if the association controls the service corporation. This requirement is consistent with 12 U.S.C. 1828(m).

[116] 12 U.S.C. 1813(w)(5).

[117] The primary differences between the definition of control in part 174 and the definition of control in the BHC Act at 12 U.S.C. 1841(a)(2) and the Federal Reserve Board's implementing regulations (BHC definition) are: (i) Part 174 includes certain rebuttable control presumptions that are not in the BHC definition; and (ii) part 174 includes certain presumptions of concerted action that are not in the BHC regulations.

[118] *See* 61 FR 66561, at 66564 (Dec. 18, 1996). The OTS noted that it would review any proposal to organize an LLC or limited partnership as a first-tier service corporation in the notice process to ascertain whether liability will in fact be limited and whether any other safety and soundness concerns are present.

[119] *Id.*

[120] 12 CFR 159.3(n)(2).

[121] 76 FR 43549 at 43552, 43558, and 43565–66 (July 21, 2011).

corporate identity, with one exception. Specifically, § 5.59(e)(8) does not include the provision in § 159.10(a)(3) that requires adequate financing as a separate unit in light of normal obligations reasonably foreseeable for a business of the service corporation's size and character because the OCC believes that this provision may be unnecessarily burdensome. For a service corporation that the Federal savings association does not control, the savings association may not have the power to ensure that it is adequately financed at all times and such lack of control may help demonstrate the service corporation's separate corporate identity. Where the savings association controls the service corporation, the savings association may find it an ineffective use of resources to finance the entity far in advance; the proposed change helps provide a savings association with flexibility as to when it provides financing to the service corporation and reduces uncertainty regarding what the agency may consider adequate financing.

Section 5.59(f) retains the list of preapproved activities currently in § 159.4, with minor changes. Section 159.4(h) addresses both community development and charitable activities. Section 5.59(f) divides this paragraph into two separate provisions, one addressing community development (paragraph (f)(8)), and the other addressing charitable activities (paragraph (f)(9)). In addition, the final rule simplifies the community development provision by deleting the current list of examples of preapproved community development activities (which generally fall within the scope of the 12 CFR 24.3 description of public welfare investments) and by revising the provision to include a reference to community and economic development or public welfare investments that are permissible under part 24. We note that the final rule makes technical edits to this provision as proposed to more accurately describe the types of investments considered community development investments by specifically referencing economic development and public welfare investments and to clarify that investments in rural business companies are permissible if those companies are licensed by the U.S. Department of Agriculture.

Section 5.59(g) is based on § 159.5, which specifies the limitations for a Federal savings association's investments in service corporations. As in the current rule, § 5.59(g)(1) provides that a Federal savings association may invest up to three percent of assets in service corporations, and that any investment that would cause a savings association's investment in service corporations to exceed two percent of assets must serve primarily community, inner city, or community development purposes. The current rule specifies several types of investments as serving primarily community, inner city, or community development purposes. As in the proposed rule, the final rule deletes these examples, all of which are within the scope of § 24.6, and instead provides that such investments must be consistent with § 24.6. The final rule makes technical edits to this provision as proposed to more accurately describe the types of investments permissible above two percent of assets by adding investments with economic development or public welfare purposes.

Section 5.59(g)(2) specifies the limitations for a Federal savings association's loans to service corporations. As permitted by the HOLA, and as proposed, the final rule clarifies that these loans may be made to any service corporation, both consolidated and nonconsolidated, provided that loans to service corporations that are not GAAP-consolidated meet the lending limits in 12 CFR part 32. Section 159.5(b) does not specifically address consolidated service corporations.

Section 5.59(h)(1)(ii) includes an information requirement for service corporations with respect to insurance activities that is similar to the requirement for operating subsidiaries. This provision, which is intended to help the OCC carry out its statutory responsibilities,[122] requires a Federal savings association to list for each state the lines of business for which the service corporation holds, or will hold, an insurance license, and each state in which the service corporation holds a resident license or charter.

Section 5.59(h)(2) revises the circumstances under which a Federal savings association receives expedited review for a service corporation filing. Currently, the criteria for expedited review are set forth in 12 CFR part 116. Pursuant to this rulemaking, a service corporation filing is eligible for expedited review if the savings association is ''well capitalized'' and ''well managed,'' and the service corporation engages only in one or more of the preapproved activities listed in § 5.59(f).

The proposed rule included a new requirement for Federal savings associations to file an annual report listing, for each service corporation subsidiary that is not functionally regulated and does business with consumers in the United States, certain information including the name and principal place of business of the service corporation, the lines of business in which the service corporation subsidiary engages directly with consumers, and the nature of the parent savings association's interest in the service corporation subsidiary. This proposal was mirrored on the requirement for national banks at § 5.34(e)(7); there is no similar provision in part 159. We received one comment on this proposed report. As with the proposed report for operating subsidiaries of Federal savings associations, in proposed § 5.38, this commenter stated that this reporting requirement would impose a new compliance burden without sufficient analysis or justification. As we have done with the reporting requirement in § 5.38, the OCC has reconsidered this proposed report in light of this comment and no longer believes it is necessary. Fewer Federal savings association service corporations exist than national bank operating subsidiaries, and the OCC is able to determine service corporation ownership by means that are less burdensome than an annual report, such as through the examination process. However, the OCC will continue to monitor this area to determine if such a report becomes necessary in the future.

C. Conforming and Technical Amendments

As indicated above, the OCC proposed to make conforming and technical changes to parts 5, 7, and 34 and in various provisions of parts 100 through 199 to reflect the movement of the licensing rules for savings association rules to part 5, to adjust section titles, and to conform cross-references. The OCC did not receive any comments on these proposed changes, and we adopt the amendments as proposed with the exception of the changes proposed to § 5.47. Because the OCC's interim final rule amending § 5.47, issued subsequent to the Licensing proposed rule, includes these technical amendments, we have

[122] Section 307(c) of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1416, codified at 15 U.S.C. 6716, requires the OCC to consult with the appropriate state insurance regulator, and take such regulator's views into account, before making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution with a company engaged in insurance activities.

removed them from the final rule as no longer necessary.[123]

Specifically, the final rule amends § 162.4, Audit of savings associations, to replace the cross-reference to the part 116 definition of composite ratings with a reference to the Uniform Financial Institutions Rating System, as referred to in other OCC rules. The final rule also amends part 192, Conversions from mutual to stock form, to replace references to part 116; part 152, Federal savings associations incorporation, organization and conversion; subpart E, Capital distributions, and subpart H, Notice of change in directors or senior executive officers, of part 163; and part 174, Change in control, with the appropriate cross-references in amended part 5. In addition, the final rule amends § 160.35, Adjustments to home loans, by replacing the reference to the standard treatment processing procedures of part 116 with a statement that Federal savings associations must apply for and receive the OCC's prior written approval. Furthermore, the final rule conforms the cross-references to part 159, Subordinate Organizations, and § 163.81, (subordinated debt) to proposed §§ 5.59 and 5.56, respectively.

Part 32, Lending limits, also references the expedited and standard application processing procedures of part 116 at § 32.3(d), Loans by savings associations to develop domestic residential housing units. The OCC proposed to replace this reference with a new paragraph that sets forth the application procedures for Federal savings associations for this activity. These procedures are based on those in § 32.7(b) with the addition of an expedited review process. With respect to state savings associations, the OCC proposed to replace the citation to the FDIC application processing rule with a more general reference to the rules and procedures established by the appropriate Federal banking agency. The OCC did not receive any comments on these proposed changes to part 32, and adopt them as proposed.

The OCC also proposed to amend §§ 5.39, Financial subsidiaries[124] and 5.64 (dividends), which are not being integrated in this rulemaking, to clarify and make consistent the OCC office to which a national bank or Federal savings association must file a notice or application. We received no comments on these changes and adopt them as proposed. Specifically, the final rule directs such filings to the institution's appropriate OCC licensing office or appropriate OCC supervisory office, as noted, instead of the appropriate district office.

Furthermore, the OCC proposed to amend §§ 100.1, Certain regulations superseded, and 100.2, Waiver authority, so that these provisions continue to apply to rules pertaining to savings associations that would be included in parts other than parts 100 through 199 of Title I of Chapter 12 of the Code of Federal Regulations as a result of this rulemaking. The OCC received no comments on these amendments and adopt them as proposed.

Finally, the final rule makes additional technical amendments to our rules not included in the proposed rule. Specifically, the final rule corrects inaccurate cross-references in paragraphs (d)(2) and (g)(1) of § 5.36 and in § 32.2(g)(1)(iv). The final rule also updates the OCC's telephone number in § 4.18(b) and footnote 2 to part 7. Furthermore, the final rule makes a technical amendment to the definition of ''service corporation'' in § 161.45 that replaces the current definition with a cross-reference to the definition included in § 5.59(d)(4), as added by this final rule.

IV. Summary of Substantive Changes for National Banks and Federal Savings Associations

A. Substantive Changes for National Banks

The following is a summary of the substantive changes, listed by rule, contained in this final rule for national banks. This summary is provided for reader reference only; it does not take the place of the actual regulatory text of the final rule.

Rules of General Applicability (12 CFR part 5, subpart A)

- To qualify for expedited review as an ''eligible bank,'' a national bank will be required to have a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System. Currently, a bank's consumer compliance rating is not a factor in the requirements for eligibility; however, § 5.13(a)(2) currently permits the OCC to remove a filing from expedited review if it raises certain issues, including any compliance concerns.
- A national bank will be required to publish its public notice of a filing in English and, if the OCC determines necessary, also in other languages. Currently, the rules do not specify the language in which the notice must be published.
- In addition to what is currently required, a public notice related to a national bank filing will be required to state: (1) the name of the institution that is the subject of the filing, (2) that the public portion of the filing is available on request, and (3) the address of the applicant.
- The OCC, at its discretion, can require an applicant to publish a new public notice if: (1) The applicant submits either a revised filing or new or additional information related to a filing, (2) there is a major issue of law or a change in circumstances arises after a filing, or (3) the agency determines that a new public notice is appropriate. (Although this is not specifically permitted under current rules, this has been the practice of the OCC.)
- When computing time for national bank filings, the day of the filing will no longer be included and the time period will no longer end on a Saturday, Sunday, or Federal holiday but will end on the next day that is not a Saturday, Sunday or Federal holiday.

Articles of Association, Bylaws, Charters and Chartering Procedures (12 CFR 5.20, 5.21, 5.22)

- National banks will be prohibited by regulation from adopting a title that misrepresents the nature of the institution or the services it offers. This reflects current practice.
- National banks will be required to sell all securities of a particular class in an initial offering at the same price.
- In the event the organization of a national bank is not completed, the organizers will be required to return all cash collected on subscriptions.
- The OCC charter approval may include a condition that the OCC will review proposed directors and officers for more than two years after the bank commences business. The regulation currently says two years, but a longer time is sometimes imposed in practice.
- Expedited OCC review will be available for an application to establish a full-service national bank filed by a bank holding company or savings and loan holding company only when the lead depository institution is an eligible national bank or eligible Federal savings association. Currently, the lead depository institution can be an eligible state institution.

[123] 79 FR 75417 (Dec. 18, 2014).

[124] We received one comment letter regarding § 5.39, which asked that the OCC provide greater clarity on how to convert a financial subsidiary back to an operating subsidiary, as neither § 5.24, Conversion, nor § 5.39, Financial subsidiaries, address this type of transaction. We agree that it may be helpful to provide this information and will consider including these procedures in either a future rulemaking issued in response to other EGRPRA comments, or a more general explanation in Comptroller's Licensing Manual.

Conversions (12 CFR 5.24, 5.25)

• *Conversion to a National Bank Charter:*

○ An institution seeking to convert to a national bank charter will be required by regulation to obtain all necessary regulatory and shareholder approvals. (OCC policy currently requires these approvals.)

○ The application must:

▪ Identify bank service company investments and other equity investments, in addition to subsidiaries. (This requirement reflects current practice.)

▪ Include a business plan if the converting institution has been operating for less than three years, plans to make significant changes to its business after the conversion, or at the request of the OCC. (The OCC currently requests this information on a case-by-case basis.)

▪ Include information about enforcement actions and other supervisory criticisms and the applicant's analysis of whether conversion is permissible under 12 U.S.C. 35, especially the provisions added to section 35 by section 612 of the Dodd-Frank Act.

○ The OCC may permit a converted national bank to retain nonconforming activities of a state bank or stock state savings association and nonconforming assets or activities of a Federal stock savings association for a transition period after conversion. (This regulatory change reflects current OCC practice.) The regulation now provides that the OCC may only permit the retention of nonconforming assets of a converting state bank, subject to requirements in 12 U.S.C. 35.

○ Expedited OCC review will be available only for conversion applications by Federal savings associations because they are institutions the OCC already regulates. Expedited review will no longer be available for state-chartered institutions. The time for expedited review is extended from 30 to 60 days.

• *Conversions from a National Bank to a Federal Savings Association*

○ A national bank converting to a Federal savings association no longer is required to file a notice with the OCC as well as a separate application. Information included in this former notice instead will be included in the conversion-in application pursuant to § 5.23.

• *Conversions from a National Bank to a State-Chartered Institution:*

○ As required by section 612 of the Dodd-Frank Act, a national bank must include a copy of its conversion application filed with the state regulator to which it is applying for approval to convert in its notice to the OCC to convert, and it must send a copy of the application to the Federal banking agency that will become its appropriate Federal banking agency after the conversion.

○ It must also include a showing of its compliance with applicable requirements for converting.

Fiduciary Powers Applications (12 CFR 5.26)

• When reviewing an application to exercise fiduciary powers, the OCC will by regulation consider the bank's financial condition and capital adequacy, the character and ability of proposed trust management, the adequacy of any proposed business plan, and the needs of the community served. (Some of these factors are statutory and all reflect current OCC practice.)

• A national bank that has not conducted previously approved fiduciary powers for 18 consecutive months will be required to provide a notice to the OCC 60 days in advance of commencing the activities.

• A national bank that has received approval from the OCC to exercise limited fiduciary powers and desires to exercise full fiduciary powers will be required to apply to the OCC. (This requirement reflects current OCC practice.)

Branching (12 CFR 5.30 and Branching-Related Sections in part 7)

• A drive-in or pedestrian facility located within 500 feet of a branch will always be an extension of the branch, not a separate branch. Currently, this result depends on a case-by-case analysis.

• Under the expedited approval process, short-distance relocations of branches will be deemed approved 15 days after the close of the comment period or 30 days after the date the notice is filed, whichever is later. Currently, short-distance relocations are deemed approved 15 days after the close of the comment period or 45 days after the date the notice is filed, whichever is later.

Expedited Procedures for Certain Reorganizations (12 CFR 5.32)

• A national bank will not be required to comply with the public notice, public availability, and hearing requirements of part 5, subpart A (12 CFR 5.8, 5.9, and 5.11) for an application to reorganize to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company unless the OCC concludes that an application presents significant and novel policy, supervisory, or other legal issues. Currently, such applications are subject to these subpart A requirements.

Business Combinations (12 CFR 5.33)

• An application to the OCC will be required for the assumption of deposit liabilities or other liabilities from a credit union or any other institution that is not FDIC-insured that will become deposits at the assuming national bank.

• In the application for a business combination, national banks will be required to identify a financial subsidiary investment, bank service company investment, service corporation investment, and other equity investment in addition to the current requirement to identify subsidiaries and provide an analysis of the permissibility for the national bank to hold the subsidiary or investment. This regulatory change reflects current practice.

• If the applicant intends to exercise fiduciary powers after the combination and requires OCC approval for such powers, the applicant will be required to include in the business combination application the information required in § 5.26 for a request for fiduciary powers. This regulatory change reflects current practice.

• Filings in which a national bank is the target company and will not be the resulting institution will no longer be exempt from §§ 5.2 and 5.5. Section 5.2, Rules of general applicability, provides that the OCC may adopt different procedures for particular filings, in exceptional circumstances or for unusual transactions, and that the OCC permits electronic filing. Section 5.5 provides that an applicant must pay the applicable filing fee, if any.

• If there are dissenting shareholders in a merger or consolidation between a national bank and Federal savings association, the OCC will conduct an appraisal of dissenters' shares of stock according to the statutory dissenters' appraisal processes that apply to mergers between national banks and state banks. Under the current rule, the OCC may conduct such an appraisal if all the parties agree.

• The OCC will have the authority to apportion costs for the dissenters' rights process for transactions to which 12 U.S.C. 214a or 215 and 215a are not applicable. (These statutes require the bank to bear all costs.) Under the current rule, in transactions that are not subject to those statutes, the parties must agree how costs are to be divided.

Under the final rule, if the OCC regulates the institutions and the transaction is not subject to the statutes, then the OCC will have the authority to apportion costs as the OCC determines.

- A national bank's consolidation or merger agreement will be required to address the effect upon, and the terms of the assumption of, any liquidation account of any participating institution by the resulting institution. Although not currently in § 5.33, a resulting national bank in such transactions is required to establish and maintain a liquidation account, as discussed in the Comptroller's Licensing Manual.
- The national bank applicant in a consolidation or merger will be required to submit information showing that all steps needed to complete the transaction have been met and to notify the OCC of the planned consummation date. The OCC will then issue a certification letter documenting that the consolidation or merger occurred and specifying the effective date. This process reflects current OCC practice for national banks.
- The OCC's approval of a transaction under § 5.33 will expire in six months instead of 12 months; the OCC could extend this six-month period.
- A national bank that will not be the resulting bank in a merger or consolidation with another national bank will be required to file a notice to the OCC under § 5.33(k). (This notice is discussed in the next item.)
- When a national bank is consolidating or merging with a Federal savings association or a state chartered institution or credit union and the national bank is not the resulting institution, it will be required to include more information in the notice than currently required in § 5.33. This additional information includes a short description of the transaction or a copy of the filing made by the acquiring institution to its regulators for approval of the transaction and information showing the target national bank or Federal savings association has complied with the requirements to engage in the transaction (*e.g.,* board and shareholder approval). (The bank should already have compiled this information.)
- If a consolidation or merger of a national bank in which the national bank is not the resulting institution has not occurred within six months after the OCC's receipt of the notice of the transaction, the bank will be required to submit a new notice with the OCC.

Operating Subsidiaries (12 CFR 5.34)

- Before beginning business, an operating subsidiary will be required to comply with other laws applicable to it, including applicable licensing or registration requirements. This change codifies current OCC policy.
- The final rule makes the following changes regarding a national bank's control of an operating subsidiary:
  - Where a national bank has the ability to control the management and operations of an operating subsidiary, no other person or entity can exercise effective operating control over the subsidiary or have the ability to influence the subsidiary's operations to an extent equal to or greater than that of the bank. This change codifies current OCC policy.
  - Where a bank owns less than 50 percent of an operating subsidiary (but still controls it), no other party could own a greater percentage than the bank. This change codifies current OCC policy.
- A national bank must have reasonable policies and procedures to preserve the limited liability of the bank and its operating subsidiaries.
- Adequately capitalized banks will no longer be exempt from the application or notice requirements when acquiring or establishing an operating subsidiary or performing a new activity in an existing operating subsidiary when the activities of the new subsidiary are limited to those previously reported to the OCC in connection with a prior operating subsidiary and certain other requirements are met.
- If a national bank operating subsidiary wishes to act as a fiduciary, its national bank parent will be required to have fiduciary powers and the operating subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary. The operating subsidiary no longer may rely on the national bank's fiduciary powers, except when the subsidiary exercises investment discretion on behalf of customers or provides investment advice for a fee as a registered investment adviser. This change codifies longstanding OCC practice.
- OCC approvals granted under § 5.34 expire within 12 months if a national bank has not established or acquired the operating subsidiary or commenced the new activity in an existing operating subsidiary, unless the OCC shortens or extends the time period.

Investment in Bank Service Companies (12 CFR 5.35)

- To invest in a bank service company, a national bank will be required to file a prior notice for OCC approval through an expedited review process, under which the notice will be deemed approved on the 30th day after filing unless the OCC notifies otherwise. Under the current rule, a national bank files an after-the-fact notice with no requirement for OCC approval before the bank makes the investment, if specified eligibility conditions are met.

Other Equity Investments (12 CFR 5.36)

- No substantive changes.

Banking Premises (12 CFR 5.37, 7.1000, 7.3001)

- No substantive changes.

Main Office and Home Office Relocations (12 CFR 5.40)

- Under the expedited approval process, short-distance relocations of main offices will be deemed approved 15 days after the close of the comment period or 30 days after the date the notice is filed, whichever is later. Currently, short-distance relocations are deemed approved 15 days after the close of the comment period or 45 days after the date the notice is filed, whichever is later.

Change in Corporate Title (12 CFR 5.42)

- No substantive changes.

Changes in Permanent Capital (12 CFR 5.46)

- No substantive changes.

Voluntary Liquidation (12 CFR 5.48)

- The following provisions in the final rule codify existing OCC or national bank practice:
  - A national bank may not commence liquidation until the OCC has notified it that the agency does not object to the liquidation plan.
  - A national bank's board of directors, in addition to its shareholders, must vote to approve a voluntary liquidation plan.
  - A national bank must provide notice of the liquidation to depositors, other known creditors, and known claimants in addition to the current requirement to publish notice in accordance with 12 U.S.C. 182.
  - The national bank's liquidating agent or committee must submit to the OCC a report at the start of liquidation showing the bank's current balance sheet and a final report of the liquidation.

Change in Control (12 CFR 5.50)

- The final rule adds several presumptions of concerted action. These additional presumptions provide clarity and guidance about how and when parties are presumed to be acting in concert for purposes of § 5.50.
- Acquirers will be permitted to rebut a presumption of control in cases where

the acquirer will have a representative on the board of directors of the national bank to be acquired. Currently, an acquirer that proposes to rebut control of a national bank cannot have a representative on the board.

- The final rule establishes specific limitations, in the rebuttal of control context, on the total equity invested, where an acquirer proposes to acquire more than fifteen percent of the national bank's voting stock.

Changes in Directors and Senior Executive Officers (12 CFR 5.51)

- An advisory director of a national bank who may vote on matters before, or provides more than general advice to, any committee of the board of directors, in addition to the board itself, will be subject to the requirements of § 5.51.
- The notice of a change in directors or senior executive officers for a national bank will need to include financial information on the individual, except when the OCC determines in writing that such information is not required.
- If the OCC requests additional information regarding the notice, a national bank that cannot provide the requested information within the time specified by the OCC may request additional time to provide the information.
- An individual who is serving on an interim basis pursuant to an OCC-granted waiver and receives a notice of disapproval will be required to resign immediately from the board, and will be able to assume the position on a permanent basis only if the notice of disapproval is reversed on appeal and all other applicable legal requirements are satisfied. Currently, the individual may continue on the board pending resolution of an appeal.

Change in Address (12 CFR 5.52)

- A national bank will not be required to file a notice of a change in the permanent address of its home office if it submitted a notice under § 5.40(b), Relocation of a main office to a branch location in the same city, town or village.

Change in Asset Composition (12 CFR 5.53)

- With regard to a change in asset composition, the national bank rule requires approval of only the sale of all or substantially all of a bank's assets, and the subsequent purchase of assets or expansion of operations after such a sale. Under the final rule, the following additional transactions require approval under § 5.53:
  - Any other asset purchases or other expansions of business that are part of a plan to increase the size of the bank by more than 25 percent in one year.
  - As determined by the OCC on a case-by-case basis, any other material increase or decrease in the size of the bank or a material alteration in the composition of the types of its assets or liabilities (including the entry or exit of business lines). The OCC will consider the size and nature of the transaction and the condition of the institutions in determining whether to require an application and believes the additional situations in which the OCC will require an application likely already involve discussions between the bank and its appropriate supervisory office.
- The OCC will need to approve a bank's plan of voluntary liquidation in order for asset changes that are part of such liquidation to be exempt from the approval requirements of § 5.53. (The OCC also is amending the regulation governing liquidations, § 5.48, to require OCC approval of the plan of liquidation.)
- Asset changes that are subject to OCC approval under another application to the OCC will specifically be exempt from the approval requirements of § 5.53. This exception is now only implied.

B. Substantive Changes for Federal Savings Associations

The following is a summary of the substantive changes contained in this final rule, listed by revised rule, for Federal savings associations. This summary is provided for reader reference only; it does not take the place of the actual regulatory text of the final rule.

Rules of General Applicability (12 CFR part 5, subpart A)

- As a result of removing 12 CFR part 116 and applying 12 CFR part 5, subpart A, Federal savings associations will need to follow different procedural and processing provisions. While many of the underlying processes are similar, minor variations and different terminology is sometimes used. Federal savings associations will need to adjust to these variations and differences.
- Adequately capitalized Federal savings associations will no longer qualify for expedited treatment; only well capitalized institutions will be eligible.
- A Federal savings association will no longer have to publish a public notice within the seven days before a filing date but may publish as soon as practicable before or after filing, unless otherwise required.
- In addition to what is currently required, a public notice related to a Federal savings association filing will have to state that a filing is being made and the date of the filing.
- A Federal savings association can publish a single public notice for multiple transactions or a single notice that will comply with the notice requirement of both the OCC and another Federal agency, if accepted by the OCC. (Although this is not specifically permitted under current rules, this has been an accepted practice for Federal savings association filings.)
- Federal savings associations will obtain from the OCC the public comments made in response to a filing's public notice. Currently, the commenter is required to send comments directly to the institution.

Articles of Association, Bylaws, Charters and Chartering Procedures (12 CFR 5.20, 5.21, 5.22)

- All Federal savings associations:
  - The majority of a de novo savings association's board of directors will no longer be required to be representative of the state in which the association is located.
  - A savings association's board of directors no longer will be required to annually elect a chairman of the board from among its members and designate the chairman of the board, when present, to preside over meetings.
  - An application to charter a Federal savings association will be subject to the same two-part approval process used for *de novo* national bank charters, whereby the OCC first issues a preliminary approval, followed by a final approval and charter issuance if the applicant completes all of the steps required by the preliminary approval and the Comptroller's Licensing Manual. Under the current Federal savings association rule, there is one approval before the OCC issues the charter but the approval is subject to the institution completing various post-approval organizational steps and other requirements before it can commence business, as specified in 12 CFR 143.4, 143.5, 143.6, and 152.1(c) through 152.1(i).
  - Expedited OCC review will be available for an application to establish a full-service Federal savings association filed by a bank holding company or savings and loan holding company when the lead depository institution is an eligible national bank or eligible Federal savings association. The current regulations for chartering a *de novo* Federal savings association do not have a comparable expedited review process.

○ The OCC's preliminary approval of an application for a new Federal savings association will expire if the savings association has not raised the required capital within 12 months or has not commenced business within 18 months. Under current rules, a Federal savings association's charter becomes void if organization is not completed within six months after approval.

○ In the *de novo* chartering approval process, the OCC will no longer be required to consider the criteria in §§ 143.2(g)(1) and 152.1(b)(1) as to whether the Federal savings association will provide credit for housing in a safe and sound manner and the approval considerations set forth in § 143.3 regarding the composition of board or directors.

• Federal Stock Savings Associations:

○ A Federal stock savings associations no longer will be required to cause a true copy of its charter and bylaws to be available to accountholders at all times in each office of the savings association, or to deliver to any accountholders a copy of such charter and bylaws or amendments upon request.

○ The requirements for adopting and filing Federal stock savings association bylaws will no longer include the requirements that the adoption of bylaws be by the board of directors at its first organizational meeting.

○ Shareholder meetings no longer will be required to be held in the state in which the association has its principal place of business.

○ Staggered terms for certain directors will no longer be specified.

○ Stock certificates of a Federal savings association will no longer be required to be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. Furthermore, each certificate for shares of capital will not be required to be consecutively numbered or otherwise identified.

• Federal Mutual Savings Associations:

○ Federal mutual savings association bylaws no longer will be required to provide some of the language or requirements specified in current § 144.5(b) regarding aspects of: the location of and notices for the annual meeting of members; reporting requirements at the annual meeting; record dates; proxy voting; annual meeting governance; duties of officers and agents of the association; director election and resignation; executive committees; director, officer and employee compensation and removal; and age limits for directors.

Conversions (12 CFR 5.23, 5.25)

• *Conversions to a Federal Savings Association Charter:*

○ The applicant will no longer be required to publish a public notice of the application, and the application will no longer be available for public inspection, unless specifically required by the OCC.

○ An applicant that does not meet the qualified thrift lender test will be required to include in its application a plan for achieving compliance and a request for an exception. This is agency practice but is not expressly mentioned in the regulation.

○ Many details of the application process will no longer be included in the regulations. Instead, this information will be found in the Comptroller's Licensing Manual and other OCC guidance.

○ The applicant will be required to include in its conversion application information about enforcement actions and other supervisory criticisms and its analysis of whether conversion is permissible under 12 U.S.C. 35, especially the provisions added to section 35 by section 612 of the Dodd-Frank Act.

• *Conversions from a Federal Savings Association to a National Bank:*

○ A Federal savings association converting from its charter to a national bank no longer must file a notice to convert out as well as a separate application. Instead, information formerly included in this notice will be included in the conversion-in application pursuant to § 5.24.

Conversions From a Federal Savings Association to a State Chartered Institution

○ As required by section 612 of the Dodd-Frank Act, a Federal savings association must include a copy of its conversion application filed with the state regulator to which it is applying for approval to convert in its notice to the OCC, and it must file a copy of its conversion application with the Federal banking agency that will become its appropriate Federal banking agency after the conversion.

○ The application must also include a showing of its compliance with applicable requirements for converting.

Fiduciary Powers Applications (12 CFR 5.26 and Part 150, Subpart A)

• The time period that triggers the need to re-notify the agency before beginning to exercise previously approved fiduciary powers that have not been exercised is shortened from 5 years to 18 months.

• The trigger for requiring a new application for a Federal savings association will be whether the original approval for fiduciary activities is for limited or full fiduciary powers. Under the current rule, the trigger for a new application is whether the activity is ''materially different'' from what had been approved.

• Eligible Federal savings associations will receive expedited review of applications for fiduciary powers.

Branching (12 CFR 5.31)

• Only well capitalized Federal savings associations could be ''eligible savings associations'' as defined in part 5, and therefore exempt from the branch application requirement. Currently both well and adequately capitalized Federal savings associations are eligible for expedited treatment and therefore can be exempt from this requirement.

• A Federal savings association must obtain OCC approval in order to establish a branch at the site of a former home office unless the branch establishment meets one of the exceptions in § 5.31. Under the current rule, no notice or application is required in all cases of home office and branch office re-designations.

• Highly rated Federal savings associations not required to file a branch application must file a notice with the OCC within 10 days after the opening of the branch. This is a new requirement for Federal savings associations.

• The OCC's approval of a branch expires after 18 months, unless the OCC grants an extension. Under the current rule, OCC approval expires after 12 months.

• A state and Federal savings association must file an application with the OCC to establish or move a branch in the District of Columbia or move its principal office in the District of Columbia, pursuant to statutory requirements.

Business Combinations (12 CFR 5.33)

• A Federal savings association may acquire all or substantially all of the assets, or to assume all or substantially all of the liabilities, of nonbank affiliates, or any other company that is not a depository institution, in addition to credit unions. Currently, such acquisitions are limited to banks, savings associations, and credit unions.

• In the factors the OCC considers in reviewing a business combination, the factor covering the fairness of the transaction, equitable treatment, and disclosure is replaced by a factor

assessing the effect of the transaction on the association's shareholders (or members in the case of a mutual savings association), depositors, other creditors, and customers.

- In the application for a business combination, Federal savings associations must identify a financial subsidiary investment, bank service company investment, service corporation investment, and other equity investment in addition to the current requirement to identify subsidiaries and provide an analysis of the permissibility for the Federal savings association to hold the subsidiary or investment. This requirement reflects current practice.
- If the applicant intends to exercise fiduciary powers after the combination and requires OCC approval for such powers, the applicant must include in the business combination application the information required in § 5.26 for a request for fiduciary powers. This requirement reflects current practice.
- The OCC's approval of a transaction expires in six months; the OCC could extend this six-month period. Under current OCC practice, transactions not involving an interim association must be consummated in 120 days.
- A Federal savings association must publish an initial public notice and two other public notices during the standard 30-day public comment period. Currently, § 163.22(e)(1)(i) requires an initial publication and then publication on a weekly basis during the public comment period.
- The statutory provisions governing national bank dissenters' rights in 12 U.S.C. 215 and 215a apply to transactions in which a Federal savings association is merging or consolidating into a national bank, rather than the regulatory dissenters' rights provision in 12 CFR 152.14, with one exception—the final rule includes authority for the OCC to apportion costs for the dissenters' rights process.
- In consolidation or merger of a state bank, state savings association, state trust company or a credit union into a Federal savings association, the institution must follow the procedures and dissenters' rights process set out for such transactions in the law of the state or other jurisdiction under which it is organized.
- For consolidations or mergers of a Federal stock savings association into a another Federal savings association, the plan of merger or consolidation must provide the manner of disposing of the shares of the resulting Federal savings association not taken by dissenting shareholders. Under § 152.14(c)(11), such shares have the status of authorized and unissued shares of the resulting association. The plan of merger or consolidation could still provide such status for these shares, but under the final rule such status no longer is mandatory.
- A consolidation or merger of a stock Federal savings association into an uninsured bank, savings association, or trust company or into a credit union, or a consolidation or merger of a mutual Federal savings association into an uninsured bank, savings association, or trust company, requires only a notice to the OCC, not application and approval as required under § 163.22(c).
- Federal savings association applications for business reorganizations (defined in § 5.33(d)(3)) and streamlined applications (described in § 5.33(j)) that meet the requirements are eligible for expedited review, under which an application is deemed approved as of the later of the 45th day after the application was filed or the 15th day after the close of the comment period, unless the OCC notifies the applicant that the application is not eligible for expedited review or the expedited review process is extended. This process replaces the automatic approval provision in § 163.22(f), under which an application is deemed to be approved automatically 30 days after the OCC sends the applicant a written notice that the application is complete.
  - The size-based limit for expedited review of a business reorganization or streamlined application included in the final rule is less restrictive than the criteria for automatic approval under the current savings association rule, 12 CFR 163.22(f), which provides that an application does not qualify for the automatic approval process if the acquiring institution has assets of $1 billion or more and proposes to acquire assets of $1 billion or more. To qualify for expedited review under the final rule, business reorganizations are not limited by size and instead are limited based on the relative size of the acquiring institution and the assets to be acquired but do not have a fixed maximum dollar amount limit on the size.
  - The expedited procedures in the final rule do not include competitive impact thresholds as a disqualifier, as in the current savings association rule.
  - However, as in the current savings association rule, an applicant does not qualify for a streamlined business combination application if the transaction is part of a mutual to stock conversion under 12 CFR part 192.
- Federal savings associations will no longer be required by regulation to meet the requirements for Federal Home Loan Bank membership, as membership in a Federal Home Loan Bank is no longer mandatory.
- The approval of a board of directors of a business combination involving a Federal stock savings association is reduced from two-thirds to a majority of the directors.
- For a Federal stock savings association, the execution and filing of Articles of Combination as the method of documenting shareholder approval of the combination, consummation of the combination, and its effective date is replaced by a letter to the OCC followed by a certification issued by the OCC.
- A Federal savings association will not be required to include all terms regarding the combination in a combination agreement nor include the specific provisions in the agreement that are required by the current savings association rule.
- If a consolidation or merger of a Federal savings association in which the savings association is not the resulting institution has not occurred within six months after the OCC's receipt of the notice of the transaction, the savings association must submit a new notice to the OCC. The current rule requires a new notice after 12 months.

Investment in Bank Service Companies (12 CFR 5.35)

- No substantive changes. There are no regulations addressing Federal savings association investment in bank service companies, and the new rule closely implements the statute.

Banking Premises (12 CFR 5.37, 7.1000, 7.3001)

- For Federal stock savings associations, the quantitative limitations on investment in banking premises will be based on the association's capital stock or, if a 1 or 2 CAMELS rated, well capitalized association, 150 percent of capital and surplus. Currently, the sole quantitative limit on a Federal savings association's investment in banking premises is total capital. Because 150 percent of capital and surplus will be a greater amount than 100 percent of total capital, we expect that under the final rule, the amount that a savings association can invest in banking premises without OCC approval will be increased. For Federal savings associations that do not have a CAMELS rating of 1 or 2 and are not well capitalized, the relevant limitation will be capital stock, which is a significantly lower threshold than total capital.
- For Federal mutual savings associations, the quantitative investment limit in banking premises

will be based on the amount of retained earnings, instead of total capital.

- A Federal savings association will be required to follow the specific application requirements contained in § 5.37.
- The rulemaking will grandfather Federal savings associations' existing premises investments and arrangements for sharing office space and employees, provided the investment complies with the legal requirements in effect prior to the effective date of the final rule, and continues to comply with those requirements.
- The rule will specifically permit Federal savings associations to invest in lodging for customers, officers, or employees of the savings association, its branches, or consolidated subsidiaries in areas where suitable commercial lodging is not readily available.
- A Federal savings association will need to obtain OCC approval or provide after-the-fact notice to exercise an option to purchase banking premises or stock in a corporation that holds banking premises.
- A Federal savings association will be permitted by regulation to hold banking premises through an operating subsidiary and to hold premises by any reasonable and prudent means.
- A Federal savings association normally will need to use real estate acquired for future expansion within five years and, after holding such real estate for one year; will be required to state, by resolution of the board of directors or an appropriate authorized association official or a subcommittee of the board of directors, definite plans for use of such real estate. Currently, OCC guidance provides a Federal savings association with a one to three year timeframe for the use of real estate acquired for future premises.

Operating Subsidiaries (New 12 CFR 5.38)

- Before beginning business, an operating subsidiary of a Federal savings association will be required to comply with other laws applicable to it, including applicable licensing or registration requirements. This change will codify current OCC policy.
- Under the amended rule, an entity can be an operating subsidiary if a Federal savings association owns less than 50 percent of the voting shares of the entity, provided no other party owns a greater percentage than the savings association, the savings association otherwise controls the subsidiary, and no other person or entity can exercise effective operating control over the subsidiary or have the ability to influence the subsidiary's operations to an extent equal to or greater than that of the savings association. Currently, for an entity to be an operating subsidiary, a savings association must own, directly or indirectly, more than 50 percent of the voting shares of the subsidiary.
- A Federal savings association will be required to have reasonable policies and procedures to preserve the limited liability of the savings association and its operating subsidiaries. The detailed requirements for separate corporate identities for subsidiaries in 12 CFR 159.10 are removed.
- A Federal savings association will need to file an application and receive prior OCC approval to acquire or establish an operating subsidiary or to commence a new activity in an existing operating subsidiary. The current rule in § 159.11 requires filing a notice at least 30 days prior to establishing or acquiring a subsidiary or engaging in new activities in a subsidiary; this notice is treated like an application under § 159.1(b).
- Some applications will qualify for the expedited review of applications process. This expedited review is similar to the current rule's notice process: applications will be deemed approved by the OCC as of the 30th day after the filing is received, unless the OCC notifies the Federal savings association otherwise during the 30-day period.
  - For the application to qualify, the Federal savings association must be ''well capitalized'' and ''well managed,'' the activities to be performed by the operating subsidiary must be listed in § 5.38(e)(5)(v) (activities that have been approved for operating subsidiaries of Federal savings associations in the past), the operating subsidiary must be a corporation, limited liability company, or limited partnership, and the savings association must clearly demonstrate control over the operating subsidiary (it must meet a standard for control that is more stringent than the general standard for operating subsidiaries).
  - Under the current rule, all filings start as 30-day prior notices. They become standard treatment applications if the OCC notifies the applicant that the notice presents supervisory concerns or raises significant issues of law or policy.
  - While there is overlap between an application failing to meet the criteria to qualify for expedited review (and so requiring standard processing) and raising issues that would cause a filing to present supervisory concerns, or raises significant issues of law or policy (and so requiring standard processing), there may be instances in which a filing would have had to be processed under standard procedures under one test but not the other.
- For a Federal savings association operating subsidiary to act as a fiduciary, its savings association parent will be required to have fiduciary powers and the operating subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary. The operating subsidiary no longer will be able to rely on the savings association's fiduciary powers, except when the subsidiary exercises investment discretion on behalf of customers or provides investment advice for a fee as a registered investment adviser. This change will codify OCC and OTS practice.
- OCC approvals granted under § 5.38 will expire within 12 months if a Federal savings association has not established or acquired the operating subsidiary or commenced the new activity in an existing operating subsidiary, unless the OCC shortens or extends this time period.

Main Office and Home Office Relocations (12 CFR 5.40)

- Under the current rule, no notice or application is required if the relocation is a short-distance relocation, if the Federal savings association redesignates an existing branch office as a home office when redesignating the existing home office as a branch office, or if the savings association is highly rated and certain other requirements are met. If the relocation does not meet the above exceptions, a notice is required for savings associations that qualify for expedited treatment and OCC approval is required for all other savings associations. Under the final rule, all Federal savings associations will be required to:
  - Submit prior notice to the OCC for home office relocations to a branch site in the same city, town, or village of the current home office; and
  - Obtain prior OCC approval for home office relocations to a branch location other than a branch site in the same city, town, or village of the current home office. An application submitted by an eligible Federal savings association will be deemed approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC (or in the case of a short-distance relocation, the 30th day after the filing is received by the OCC), whichever is later, unless the OCC notifies the bank or savings association prior to that time that the filing is not eligible for expedited review, or the expedited review period is extended.

○ Obtain OCC approval pursuant to § 5.31 (branching) in order to establish a branch at the site of a former home office unless the branch establishment meets one of the exceptions in § 5.31. Under the current rule, no notice or application is required in all cases of home office and branch office re-designations.

○ Open a relocated home office within 18 months from the date of OCC approval, unless the OCC grants an extension. Under the current rule, this office must be opened within 12 months of OCC approval or non-objection.

Change in Corporate Title (12 CFR 5.42)

• Federal savings associations will be required to submit an after-the-fact notice to the OCC instead of a 30-day prior notice for a change in corporate title.

Increases in Permanent Capital (New 12 CFR 5.45)

• Federal stock savings associations will be required to apply to the OCC and obtain prior approval for increases in capital in the following circumstances: (1) When the savings association is required to receive OCC approval pursuant to letter, order, directive, written agreement or otherwise, (2) when the savings association is selling common or preferred stock for consideration other than cash, or (3) when the savings association is receiving a material noncash contribution to capital surplus. Currently, savings associations are not required to apply for increases in capital.

Voluntary Liquidation (12 CFR 5.48)

• The Federal savings association's liquidating agent or committee will be required to submit to the OCC:

○ At the start of liquidation, a report showing the association's current balance sheet;

○ Quarterly Consolidated Reports of Condition and Income (Call Reports); and

○ Annual reports on the progress of the liquidation.

• The following provisions in the final rule codify existing OCC practice:

○ A Federal savings association will be required to provide notice of the liquidation to depositors, other known creditors, and known claimants.

○ A Federal savings association will be required to publish public notice of its plan to liquidate if so directed by the OCC.

Change in Control (12 CFR 5.50)

• The current definition of ''voting securities'' in § 5.50 replaces the part 174 definition of ''voting stock.'' This will affect the standard for convertible securities. Currently, part 174 includes as voting stock any security that, upon transfer or otherwise, is convertible into voting stock or exercisable to acquire voting stock where the holder of the convertible security has the preponderant economic risk in the underlying voting stock. Section 5.50, by contrast, defines voting securities to include securities that are immediately convertible into voting securities at the option of the owner or holder.

• The final rule excludes part 174 procedures for rebuttal of control and concerted action, applying instead the provisions in § 5.50(f)(2)(vi).

• Persons who acquire control of a Federal savings association as a result of testate or intestate succession will need to file a notice and pay the appropriate filing fee within 90 calendar days after the transaction occurs. Currently, such persons need only file a notification of acquisition to the OCC within 60 days of the acquisition and provide information requested by the OCC.

• The final rule excludes the presumptive disqualifiers from part 174—a list of factors, which, if present, may show a lack of integrity or lack of financial capability to proceed with a proposed transaction.

• The regulatory changes have the effect of eliminating most of the rebuttable presumptions of control with respect to Federal savings associations that are currently set forth in 12 CFR 174.4(b) and (c). The regulatory changes also remove certain of the rebuttable presumptions of concerted action currently set forth in § 174.4(d).

• Acquirers of beneficial ownership exceeding 10 percent of any class of stock of a Federal savings association that do not file a control notice or control rebuttal will not be required to file a certification of ownership.

Changes in Directors and Senior Executive Officers (12 CFR 5.51)

• A Federal savings association will be required to provide 90 days prior notice of a new director or senior executive officer if the association is not in compliance with minimum capital requirements, is otherwise in a troubled condition, or the OCC determines, under section 38 of the FDI Act (12 U.S.C. 1831o), that prior notice is appropriate. Currently, such an association is required to provide 30 days prior notice, which the OCC may extend for an additional 60 days.

• Only a Federal savings association will be permitted to file the notice with the OCC; an individual seeking election to the board of directors who has not been nominated by management will no longer be allowed to do so.

• A Federal savings association or a proposed individual will be able to appeal an OCC notice of disapproval. The current rule does not provide an appeal process, although the OCC has permitted appeals by Federal savings associations in practice.

Change in Address (12 CFR 5.52)

• A Federal savings association no longer will be required to provide notice of a home office or post office box address change if the change results from any transaction approved under 12 CFR part 5. The current rule provides this exception only in cases of an application to relocate or establish a new home or branch office.

• All Federal savings associations no longer will be required to provide notice of a home office or post office box address change if they have filed a notice for the relocation or establishment of a new home or branch office pursuant to § 5.40 (main office and home office relocations). Under current rules, highly rated savings associations are required to file a change in address notice because they are exempt from the relocation notice requirement.

• Federal savings associations no longer will be subject to the requirement that all operations be directed from the home office.

Change in Asset Composition (12 CFR 5.53)

• The Federal savings association rule now requires approval of all purchases or sales or other transfers of assets in bulk not made in the ordinary course of business, unless the transaction is subject to the Bank Merger Act (in which case other parts of the rule apply). Under the final rule, Federal savings associations will be required to obtain OCC approval only for the following (unless one of the exceptions applies):

○ The sale or other disposition of all, or substantially all, of the savings association's assets in a transaction or a series of transactions.

○ After having sold or disposed of all, or substantially all, of its assets, subsequent purchases or other acquisitions or other expansions of the savings association's operations.

○ Any other asset purchases or other expansions of business that are part of a plan to increase the size of the savings association by more than 25 percent in one year.

○ As determined by the OCC on a case-by-case basis, any other material increase or decrease in the size of the

savings association or a material alteration in the composition of the types of its assets or liabilities (including the entry or exit of business lines). The OCC will consider the size and nature of the transaction and the condition of the institutions in determining whether to require an application and believes the additional situations in which the OCC will require an application likely already would involve discussions with the bank's appropriate supervisory office.

- When an application is required, it will have standard processing. Currently, an application can qualify for expedited treatment if all participating Federal savings associations meet the conditions for expedited treatment.

Capital Distributions (New 12 CFR 5.55)

- The expedited review process in part 5 will apply to Federal savings associations seeking expedited review of filings for capital distributions instead of the expedited treatment process in part 116. Because the eligibility requirements for expedited review differ from the requirements for expedited treatment, this change could affect which savings associations qualify for the expedited process.
  - Under the current savings association rule, both well and adequately capitalized institutions are eligible for expedited treatment. Under the new rule, only savings associations that are well capitalized will qualify for expedited review.
  - Under the current savings association rule, the institution must not have been notified that it is in troubled condition, while under the new rule an eligible savings association must not be subject to an enforcement action. (Although different, these supervisory condition tests generally should overlap.)
  - Under the current rule, a savings association that has not been assigned a CAMELS rating, a CRA rating, and a compliance rating is not eligible for expedited treatment. This requirement is not a factor in the requirements for eligible bank or eligible savings association status in part 5.

Subordinated Debt and Mandatorily Redeemable Preferred Stock (New 12 CFR 5.56)

- The expedited review process in part 5 will apply to Federal savings associations seeking expedited review of filings to issue subordinated debt instead of the expedited treatment process in part 116. Because the eligibility requirements for expedited review differ from the requirements for expedited treatment, this change could affect which savings associations qualify for the expedited process, as described above for the capital distributions rule.

Pass-Through Investments (New 12 CFR 5.58)

- Federal savings associations are allowed to make pass-through investments greater than 25 percent of the company's equity, but because this investment would make the company a subsidiary under law applicable to the Federal savings associations, the association will be required to submit an application for approval as a subsidiary.
- Federal savings associations may be subject to different filing requirements:
  - Some pass-through investments that currently may qualify for the no-notice procedure under current § 160.32(b) will require a filing under § 5.58. (However, pass-through investments in investment companies that hold assets permissible for a Federal savings association to hold directly will continue not to require a filing.)
  - For pass-through investments that meet the requirements for the after-the-fact notice procedure, the Federal savings association will need to file only the after-the-fact notice. This treatment applies both to investments that would have required a prior application under § 160.32(c) and investments that would have qualified for the no-notice procedure under current § 160.32(b).
- Federal savings associations are subject to the notice content requirements of § 5.58. Section 160.32 does not specify the content of the notice or application.

Service Corporations (New 12 CFR 5.59)

- The corporate separateness requirements are amended to eliminate the requirement that a Federal savings association's service corporation be adequately financed as a separate unit in light of normal obligations reasonably foreseeable for a business of the service corporation's size and character in order to maintain the requisite corporate separateness.
- Consistent with 12 U.S.C. 1828(m), a Federal savings association will be required to file an application with the OCC before investing in any service corporation, including one that it would not control. Currently, the service corporation regulation requires a Federal savings association to file with the OCC only if it directly or indirectly controls the service corporation.
- Applications to establish or acquire a service corporation will be required to list for each state the lines of business for which the service corporation holds, or will hold, an insurance license, and the state where the service corporation holds a resident license or charter.

V. Administrative Law Matters

Notice and Comment

Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and comment are required prior to the issuance of a final rule unless an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' This final rule includes amendments not originally include in the proposed rule published on June 10, 2014, that: (1) Update OCC telephone or fax numbers in parts 4, 7, and 24, (2) replace a form in appendix 1 to part 24 with an identical form updated to include a new OCC phone number and revision date, and (3) corrects a number of inaccurate cross-references. These amendments are purely technical in nature and for this reason, the OCC has good cause to conclude that advance notice and comment under the APA are not necessary prior to their issuance.

Effective Date

The APA requires that a substantive rule must be published not less than 30 days before its effective date, unless, among other things, the rule grants or recognizes an exemption or relieves a restriction.[125] Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that regulations imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of the calendar quarter after publication of the final rule, unless, among other things, the agency determines for good cause that the regulations should become effective before such time.[126] The July 1, 2015 effective date of this final rule meets both the APA and RCDRIA effective date requirements, as it will take effect at least 30 days after its publication date of May 18, 2015 and on the first day of the calendar quarter following publication, July 1, 2015.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA),[127] an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describe the impact of the rule on small entities, unless the head of an agency certifies

[125] 5 U.S.C. 553(d)(1).

[126] 12 U.S.C. 4802.

[127] Public Law 96–354, 94 Stat. 1164 (1980), codified at 5 U.S.C. 601–612.

that the rule will not have ''a significant economic impact on a substantial number of small entities.'' The OCC currently supervises approximately 1,109 small entities—339 Federal savings associations, 751 national banks, and 19 trust companies (collectively, small banks).[128] Because some of the final rule's provisions could impact any national bank and other provisions could impact any Federal savings association, the final rule could impact a substantial number of OCC-supervised small institutions.

We estimate that the monetized direct cost per bank will range from a low of approximately $7.6 thousand per bank to a high of approximately $15.4 thousand per bank. Using the upper bound average direct cost per small entity, we believe the compliance costs will have a significant economic impact on no more than 19 small entities (of which eight are small Federal savings associations), which is not a substantial number.[129] The OCC classifies the economic impact of total costs on a small entity as significant if the total monetized costs in a single year are greater than 5 percent of total salaries and benefits or greater than 2.5 percent of total non-interest expense. We believe 19 is not a substantial number of small entities because it represents approximately 1.7 percent of OCC-supervised small entities.

Although we believe that investments in premises may impact a small entity's competitiveness and profitability, our estimate of monetized direct costs does not include costs or benefits that may be associated with the OCC's implementation of the reduction in the quantitative limit for a Federal savings association's investments in premises. We exclude these costs and benefits for a variety reasons including the uncertainty surrounding the number of Federal savings associations that may submit applications to invest in premises, uncertainty about how the OCC will respond to any applications that may be submitted, and uncertainty of how investments in premises, if constrained, may impact small entities. However, because the OCC will require some Federal savings associations to obtain approval, we assume that investments in premises may be constrained for some small Federal savings associations. Specifically, we assume that investments may be constrained for 18 small Federal savings associations with a positive return on assets (ROA) that are currently eligible to file an after-the-fact notice for investments in premises and will not be able to do so under the final rule.[130] However, based on the recent behavior of these Federal savings associations, it is unlikely that all 18 would seek to increase their investments in premises in any one year. For purposes of this analysis we assume that the amendments to § 5.37 and constrained investments will have a significant economic impact on no more than seven additional Federal savings associations in any one year.[131] To test if a substantial number of small entities could be impacted by the final rule, we assume that requests made by these seven small Federal savings associations to make additional investments in premises will be declined. Based on the assumptions outlined in the above paragraphs, we conclude that the final rule in total could have a significant economic impact on no more than 26 small institutions of the 1,109 small entities supervised by the OCC (approximately 2.3 percent of small entities) which is not a substantial number.

Based on the information set forth above, and pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[132] Under this analysis, the OCC considered whether the final rule includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation) ($152 million in 2014). Under Title II of the UMRA, indirect costs, foregone revenues and opportunity costs are not included when determining if a mandate meets or exceeds UMRA's cost threshold. The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

The OCC's estimated UMRA cost is approximately $17 thousand.[133] Therefore, the OCC finds that the final rule does not trigger the UMRA cost threshold. Accordingly, this final rule is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995,[134] the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. The OCC submitted the information collection requirements imposed by the proposed rule to OMB at the time of publication as an amendment to its Licensing Regulations PRA Collection (OMB Control No. 1557–0014). Pursuant to 5 CFR 1320.11(c), OMB filed a comment on the information collection instructing the OCC to examine public comment in response to the proposed rule and describe in the supporting statement of its next collection any public comments received regarding the collection as well as why (or why it did not) incorporate

[128] We base our estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify a bank we supervise as a small entity. We use December 31, 2014, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[129] The OCC classifies the economic impact of total costs on a bank as significant if the total monetized costs in a single year are greater than 5 percent of total salaries and benefits or greater than 2.5 percent of total non-interest expense. We believe 19 is not a substantial number of small banks because it represents approximately 1.7 percent of OCC-supervised small entities.

[130] We assume that all small entities seek to maximize ROA and net income. Thus, we assume that those small Federal savings associations that currently have a negative ROA are not likely to seek approval to increase their investment in premises.

[131] Our assumption is based on the current number of Federal savings associations that are likely to have their ability to invest in premises impacted by the final rule (*i.e.,* the Federal savings association exceeds the new limit and its limit for investment in premises was reduced) and also meet the following three conditions: (i) The amount reported on line 6 of schedule RC increased during either of the last two years; (ii) it has a positive ROA; and, (iii) it reported having at least one office in addition to the Federal savings association's main office as of June 2014.

[132] Public Law 104–4, 109 Stat. 48 (1995), codified at 2 U.S.C. 1501 *et seq.*

[133] The OCC finds that the requirement for Federal savings associations (that are otherwise exempt from the branch application requirement) to file an after-the-fact notice when opening a new branch is a conditional mandate under the UMRA that is likely to impact a substantial number of Federal savings associations per year. We estimate that the cost associated with this new mandate is approximately $17,380 per year (182 Federal savings associations × 1 hour × $95.5 per hour). Our estimate is based on the number of 1- or 2-rated Federal savings associations that have more than one office that increased their investment in premises during either of the last two years (or approximately 50 percent of all 1- and 2-rated Federal savings associations).

[134] Public Law 104–13, 109 Stat. 163 (1995), codified at 44 U.S.C. 3501 *et seq.*

the commenter's recommendation. The OCC received no comments regarding the information collection and has resubmitted the information collection requirements to OMB for review in connection with the final rule.

The final rule contains both new and revised information collection requirements. Some of the revisions provide exceptions to existing requirements, which will result in a reduction in burden. Some of the requirements are currently in place for national banks and are being extended to cover both national banks and Federal savings associations. Some of the amendments impose new requirements on Federal savings associations and amend the requirements for national banks. A number of the revisions involve amendments to definitions, which, in some cases, will affect the respondent count for related provisions. For example, the change in the definition of ''eligible bank'' to include the consumer compliance rating in addition to the CAMELS and CRA rating will affect respondent counts. A number of the provisions being amended contain existing PRA requirements that have been previously approved by OMB.[135] The amendments made today do not create any new information collection requirements and, therefore, require no PRA filings, other than non-material changes necessary due to the consolidation of the regulations.

Rules of General Applicability

Federal savings associations will be required to follow the procedure and processing provisions currently imposed on national banks (part 5, subpart A) instead of those in part 116, which they currently follow. Only well capitalized Federal savings associations will qualify for expedited treatment and adequately capitalized institutions will no longer qualify. Public notices of filings will be required to be filed as soon as practicable after a filing date instead of seven days prior to the filing date. Public notice will have to state that a filing is being made and the date of the filing. A single public notice will be acceptable for multiple transactions or transactions filed with the OCC and another agency, under certain circumstances. Comments in response to a filing will have to be obtained from the OCC, as comments will no longer be sent directly to the institution.

The requirement for publication of notice of a filing by national banks will be made more specific and require the notice: To be published in English; to specify the name of institution that is the subject of the filing; to indicate that the public portion is available on request; and to provide the address of the applicant. Under certain circumstances, the OCC can require the applicant to publish a new notice.

Fiduciary Powers

In order to exercise fiduciary powers, Federal savings associations will be required to comply with the application requirements of § 5.26 in place of the requirements under current part 150. In addition, § 5.26 will be revised to require a national bank or Federal savings association that has not conducted previously approved fiduciary powers for 18 consecutive months to provide the OCC with 60 days' advance notice before engaging in the activities. It will also require that a national bank or Federal savings association that has received approval to exercise limited fiduciary powers apply to the OCC to exercise full fiduciary powers. Eligible Federal savings associations will receive expedited review of applications. A provision is added setting out the circumstances under which a Federal savings association does not need to apply for fiduciary powers in connection with certain mergers.

Establishment, Acquisition, and Relocation of a Branch

New § 5.31 addresses the establishment and relocation of branches, or the establishment of agency offices, by Federal savings associations and replaces several provisions currently found in part 145.

Section 5.31(f)(1) sets out the general requirement that each Federal savings association proposing to establish or relocate a branch shall submit a separate application for each proposed branch, unless the transaction qualifies for an exception. The provision in § 145.93(e) stating that a Federal savings association may not file an application or notice, or use any of the exceptions, to establish a branch if the association has filed an application to merge or otherwise surrender its charter and the application has been pending for less than six months has not been carried over to § 5.31.

Section 145.93(b)(3) provided that certain highly rated Federal savings associations are not required to file an application to change the permanent location of an existing branch or to establish a new branch if it meets certain requirements, including that the Federal savings association meet the eligibility requirements for expedited treatment. Under § 5.31(f)(2)(iii) of the final rule, the Federal savings association is an ''eligible savings association,'' as defined in 12 CFR 5.3(g), rather than eligible for expedited treatment.

Section 5.31(f)(3) is added in the final rule, which requires that highly rated Federal savings associations not required to file a branch application must file a notice with the OCC within 10 days after the opening of the branch. This notice must include the date the branch was established or relocated and the address of the branch.

Section 5.31(g) sets out exceptions to the rules of general applicability for applications by a Federal savings association to establish or relocate a branch and specifies that the OCC will be able to waive or reduce the public notice and comment period in certain emergency situations or with respect to certain temporary branches.

Section 5.31(h) provides that OCC's approval of a branch expires if the branch has not commenced business within 18 months, unless the OCC grants an extension. This period is longer than the current 12-month expiration period for branch approvals for Federal savings associations under § 145.95(c).

Section 145.93(c) currently requires prior approval for any savings association branch that would be subject to section 5(m)(1) of the HOLA (regarding District of Columbia savings associations), if the association meets the requirements of § 145.93(b) for an exception to the branch application filing requirement. New § 5.31(j) requires an application and prior written approval for each application. State and Federal savings associations will be required to file an application with the OCC to establish or move a branch in the District of Columbia.

Investment in Bank Service Companies

Section 5.35 is expanded to cover Federal savings associations. It replaces the after-the-fact notice before making an investment in the equity of a bank service company or performing new activities in an existing bank service company with an expedited prior notice procedure.

Investments in Premises

Section 5.37 is expanded to cover Federal savings associations. In addition, an alternative, after-the-fact notice process is added for both national banks and Federal savings associations and an exception to the premise application and notice requirements for investments in banking premises

[135] OMB Control Nos. 1557–0106, 1557–0140, 1557–0190, 1557–0204, 1557–0221, 1557–0266, and 1557–0310.

through a service corporation is provided for Federal savings associations. Amendments to the definitions of ''capital stock'' and ''capital and surplus,'' which will increase the amount that a Federal savings association can invest in banking premises without OCC approval, will result in a decrease in the number of requests for approval. A transition provision is added for Federal savings associations to grandfather existing banking premises investments. Modifying, expanding, or approving such investments will require prior approval. Section 7.1000(d) provides that a Federal savings association will be given a five year timeframe for the use of real estate acquired for future premises in place of the current guidance, which requires use of real estate acquired for future expansion within one to three years and, after holding the real estate for one year, requires a statement by resolution of the definite plans for use.

Main Office and Home Office Relocations

Under § 5.40, Federal savings associations will be required to submit prior notice to the OCC for home office relocations to a branch site in the same city, town, or village of the current home office and obtain prior approval for other relocations. They will also be required to obtain prior approval to establish a branch at the site of a former main or home office.

Change in Corporate Title

For change in corporate title, Federal savings associations will be required to submit an after-the-fact notice in place of the current 30-day prior notice under § 5.42.

Voluntary Liquidation

Section 5.48 is expanded to cover Federal savings associations. The liquidating agent or committee of the national bank or Federal savings association will be required to submit: A report to the appropriate OCC licensing office at the start of liquidation showing the bank's or savings association's balance sheet as of the start of liquidation; quarterly Call Reports; a report of condition at the start of the liquidation; annual progress reports; and a final report of liquidation. National banks and Federal savings associations will be required to notify all depositors, other known creditors, and known claimants of the bank or savings association.

Change in Control; Reporting of Stock Loans

This section is expanded to cover Federal savings associations. Certain procedures for rebuttal of control and concerted action under part 174 will no longer be applicable to Federal savings associations. Persons who acquire control of a Federal savings association as a result of testate or intestate succession will need to file a notice within 90 days of the transaction, while the current regulations require only a notification of the acquisition within 60 days. Under § 5.50, acquirers of beneficial ownership exceeding 10 percent of any class of stock of a Federal savings association that does not file a control notice or control rebuttal will not be required to file a certification of ownership.

Changes in Directors and Senior Executive Officers

The notice of a change in directors or senior executive officers for a national bank in § 5.51 will need to include financial information on the individual, except when the OCC determines it is not required. If the OCC requests additional information, a national bank may request a time extension to provide the information, if necessary.

Federal savings associations will be required to provide 90 days prior notice of a new director or senior executive officer, under certain circumstances, in place of the current shorter notice period. Only a Federal savings association will be permitted to file the notice; nominees no longer will be able to file. Federal savings associations will be able to appeal an OCC notice of disapproval.

Change in Address

Section 5.52 provides that, under certain circumstances, national banks and Federal savings associations will no longer be required to file a notice of home office change of address and Federal savings associations will no longer be required to provide notice of a post office box address.

Bank Activities and Operations

A number of provisions in part 7 are being expanded to cover Federal savings associations. A transition period is added to grandfather Federal savings associations' existing premise investments, provided they are not modified, expanded, or improved. A transition period is also provided for Federal savings associations that share space or employees with another business under an agreement that complies with legal requirements previously in place that would violate this provision. They will be permitted to continue under the existing agreement, but will not be able to amend, renew, or extend the agreement without prior approval.

The requirements in part 145 regarding the establishment of agency offices of Federal savings associations is removed and agency offices of Federal savings associations that conduct non-branch activities will not be considered branches and will not be required to obtain OCC approval for these offices.

Organizing a National Bank or Federal Savings Association

In § 5.20, paragraph (h) specifies requirements for the organizers' business plan or operating plan, paragraph (i) lists the procedures that the organizers must follow, paragraph (j) specifies the requirements for expedited review of an application, and paragraph (l) lists requirements for the establishment of special purpose banks. An application to charter a Federal savings association will be subject to the two-part approval process contained in paragraph (i)(5). The OCC uses a two-part approval process for *de novo* national bank charters. After an application is filed, if the OCC determines it meets the applicable standards, the application is given preliminary approval. The national banking organization would then take the steps needed to organize itself, raise capital, obtain any other regulatory approvals, and generally become ready to commence business. Final approval is given and the national bank's charter is issued only after all these steps are concluded, including compliance with any conditions imposed in the preliminary approval. Currently, the OCC issues only one approval before it issues the charter, but this approval is subject to the institution completing various post-approval organizational steps and other requirements before it can begin conducting business. Paragraph (j) currently provides for expedited review of an application to establish a full-service national bank filed by a bank holding company with a lead depository institution that is an eligible depository institution. Under the final rule, Federal savings associations and savings and loan holding companies are added.

The corresponding rules applicable to organizing Federal savings associations are found in parts 143, 144, and 152, and § 163.1. Sections 144.1 and 152.3 contain specific language and requirements to be used for the charter of Federal mutual savings associations and Federal stock savings associations, respectively, and §§ 144.2 and 152.4

contain specific requirements for the bylaws of Federal mutual savings associations and Federal stock savings associations, respectively. Sections 143.2(g)(2)(i) and 152.1(b)(3)(i) provide that approval of an application to organize a Federal mutual or stock savings association, respectively, is conditioned on OCC receipt of written confirmation from the FDIC that accounts will be insured. Section 152.2, which provides procedures for the organization of interim Federal savings associations, is rescinded and addressed in the business combinations regulation at § 5.33.

Section 5.21(j) specifies the language and requirements for Federal mutual savings association bylaws. The provision reflects the requirements in § 144.5.

Federal Stock Savings Association Charter, Bylaws and Related Provisions

Section 5.22(e) specifies the language and requirements for a Federal stock savings association charter. The provision reflects the requirements in § 152.3.

Federal Savings Association Charter and Bylaws Availability Requirement

Section 163.1(b), which requires each Federal savings association to cause a true copy of its charter and bylaws and all amendments thereto to be available to accountholders at all times in each office of the savings association, and to deliver to any accountholders a copy of such charter and bylaws or amendments thereto, upon request, is rescinded and the OCC will continue applying this requirement only with respect to Federal mutual savings associations under new § 5.21(i).

Conversions to and From National Bank and Federal Savings Association Charters

In § 5.24(d), regarding the policy for approving and disapproving conversions to national bank charters, a statement is added that the institution seeking to convert to a national bank charter must obtain all necessary regulatory and shareholder approvals. A parallel provision is found in § 143.8(a)(2), which is now in § 5.25 of the final rule. The public notice and inspection requirements at § 143.9(a)(2) are rescinded. If there are instances where the OCC believes publication is warranted, the OCC may require publication under § 5.2(b), which allows the OCC to require materially different procedures for a particular filing.

Section 5.24(e)(2)(ix) requires the application for conversion to include a business plan if the converting institution has been operating for less than three years or plans to make significant changes to its business after the conversion, instead of the current policy of requesting it on a case-by-case basis.

Section 5.24(g), which allows for expedited review of a conversion application filed by an eligible depository institution, will be limited to applications by institutions already supervised by the OCC.

Section 5.23(d)(2)(ii)(K) requires a converting institution that does not meet the qualified thrift lender test of 12 U.S.C. 1467a(m) to include a plan to achieve compliance within a reasonable period of time and to request an exception from the OCC in the application.

Section 5.25(d) provides that converting from a Federal charter does not require prior OCC approval. The institution must file only a notice with the OCC. Currently, Federal savings associations that are not eligible for expedited treatment must file an application to convert to a national bank or state bank. The notice must contain a copy of the conversion application to the regulator to which it is applying for approval to convert, and a discussion of any issues regarding the permissibility of the conversion under section 612 of Dodd-Frank Act. The institution will also be required to file a copy of its conversion application with the Federal banking agency that would become its appropriate Federal banking agency after the conversion.

For conversions between a national bank and a Federal savings association, the applicable ''converting-in'' regulation (§ 5.23 or § 5.24) will require the institution to file an application with the OCC with respect to the ''converting-in'' aspect of the transaction. Information regarding the ''converting-out'' to a national bank from a Federal savings association or from a Federal savings association to a national bank will no longer be required in a separate notice but included in the ''converting-in'' application.

Sections 5.24(e)(2)(x) and 5.23(d)(2)(ii)(J) will require the conversion application to include information about enforcement actions and other supervisory criticisms and the applicant's analysis of whether conversion is permissible under 12 U.S.C. 35, as amended by section 612.

Section 5.25(d)(3) would require that the information that must be submitted to the OCC when a national bank or Federal savings association plans to convert to a state bank or state savings association must include a discussion of the impact of any enforcement action on the permissibility of the conversion under 12 U.S.C. 214d or 1464(i)(6).

Sections 5.24(e)(2), 5.23(d)(2)(ii), 5.25(d)(3)(i), and 5.25(d)(3)(ii)(A) require that, at the time an insured depository institution files a conversion application, it must transmit a copy of the conversion application to both the appropriate Federal banking agency for the institution and the Federal banking agency that will become the appropriate Federal banking agency for the institution after the proposed conversion.

Service Corporations

Under the current service corporation regulation, a Federal savings association must file a notice under part 116 at least 30 days before establishing or acquiring a subsidiary or engaging in a new activity in a subsidiary. A Federal savings association is not required to file a service corporation application if the association proposes to make a non-controlling investment in a service corporation. The final rule amends the service corporation regulation at § 5.59 to require that a Federal savings association file with the OCC before acquiring or establishing any service corporation, including one that it would not control.

Section 5.59(h)(1)(ii) requires a Federal savings association to list for each state the lines of business for which the service corporation holds, or will hold, an insurance license, and each state in which the service corporation holds a resident license or charter. Section 5.59(h)(2) changes the circumstances under which a Federal savings association would receive expedited review for a service corporation filing, currently found in part 116. A service corporation filing will be eligible for expedited review if the savings association is ''well capitalized'' and ''well managed,'' and the service corporation engages only in one or more of the preapproved activities listed in § 5.59(f).

Operating Subsidiaries; Subordinate Organizations

New § 5.34(e)(2)(iii) is added to clarify that a national bank must have reasonable policies and procedures to preserve the limited liability of the bank and its operating subsidiaries. This requirement has been adapted from § 159.10 and is consistent with the new operating subsidiary rule for Federal savings associations.

Current § 5.34(e)(5)(i) provides that national banks meeting certain requirements are not required to file a prior application but may give after-the-fact notice when establishing or

acquiring an operating subsidiary or performing a new activity in an existing operating subsidiary. Paragraph (e)(5)(ii) requires a prior application and OCC approval in other instances and sets out the information that must be included in the filing.

Current § 5.34(e)(5)(vi) provides that no application or notice is required for a national bank that is well managed and adequately capitalized or well capitalized to acquire or establish an operating subsidiary or perform a new activity in an existing operating subsidiary, if the activities of the new subsidiary are limited to those previously reported to the OCC in connection with a prior operating subsidiary and certain other requirements are met. The final rule changes the criteria from adequately capitalized to well capitalized. This is consistent with the well capitalized requirement to be eligible for the after-the-fact notice procedure.

Section 5.38(b) will require a Federal savings association to file an application to acquire or establish any operating subsidiary or to commence a new activity in an existing operating subsidiary. Part 159 required Federal savings associations to give 30 days' notice to the OCC prior to establishing or acquiring an operating subsidiary or commencing a new activity in an operating subsidiary. Section 159.11 required a filing when it is required under 12 U.S.C. 1828(m), and section 1828(m) does not require a filing if the subsidiary is an insured depository institution. Section 5.38(b) will require an application to acquire an insured depository institution as an operating subsidiary. A proposal for a Federal savings association to own an insured depository institution subsidiary that would cause the savings association to be a bank holding company or a savings and loan holding company raises issues of law and policy as well as supervisory concerns. The acquisition of other insured depository institutions as operating subsidiaries also requires agency review. Accordingly, the OCC believes an application is needed, even if not required under 12 U.S.C. 1828(m).

Section 5.38(d) sets out definitions for ''well capitalized'' and ''well managed,'' which will be used as part of the determination of which applications are eligible for expedited review by the OCC. These definitions are the same as those in § 5.34(d), and the OCC uses these terms as criteria to permit national banks to make an after-the-fact notice filing pursuant to § 5.34(e)(5). They are also used in § 5.38 to determine if an application by a Federal savings association is eligible for expedited review.

Section 5.38(e)(2)(iv)(A) (similar to § 159.10) expressly requires a savings association to have reasonable policies and procedures to preserve the limited liability of the savings association and its operating subsidiaries. Section 5.38(e)(5) sets forth the operating subsidiary application requirements for savings associations.

Section 159.11 specifies when Federal savings associations must file a notice at least 30 days prior to establishing or acquiring an operating subsidiary or conducting a new activity in an existing operating subsidiary. Section 5.38(e)(5) specifies the procedures a Federal savings association must follow when filing applications required under § 5.38. Section 5.38(e)(5)(ii)(A) provides for expedited review of applications to establish or acquire an operating subsidiary, or to perform a new activity in an existing operating subsidiary. The expedited review process is similar to that contained in § 159.11.

Section 159.3(p)(1) provided that a Federal savings association must consult with the appropriate OCC licensing office prior to redesignating a service corporation as an operating subsidiary, and make available for examination adequate internal records demonstrating that the redesignated office meets all of the requirements for an operating subsidiary and that the board of directors has approved of the redesignation. Section 5.38(e)(vi) requires a Federal savings association to provide 30 days' prior notice to the OCC when the savings association wants to redesignate a service corporation as an operating subsidiary.

Pass-Through Investments

Section 160.32(b) currently provides that a Federal savings association may make certain qualifying pass-through investments without prior notice to the OCC in any entity that is a limited partnership, an open-ended mutual fund, a closed-end investment trust, a limited liability company, or an entity in which the Federal savings association is investing primarily to use the company's services. Section 160.32(c) requires a Federal savings association to provide the OCC with written notice 30 days prior to making any pass-through investment that does not meet the no-notice standards. The notice is a form of application and may become a standard application if the OCC notifies the filer that the investment presents supervisory, legal, or safety and soundness concerns. The final rule removes these provisions and cross-references § 5.36.

New § 5.58(e) mirrors § 5.36(e) and provides that a well capitalized, well managed Federal savings association may make certain pass-through investments, directly or through its operating subsidiary, in certain entities by filing a written after-the-fact notice with the OCC no later than 10 days after making the investment if the activity conducted by the enterprise is on the list of activities eligible for a notice filing for operating subsidiaries, or if it is substantially the same as an activity that has been previously approved for a Federal savings association (or its operating subsidiary).

If a Federal savings association is not well capitalized and well managed or if the activity conducted by the enterprise does not qualify for the after-the-fact notice procedure, the savings association will be required to apply to the OCC and receive prior approval for the non-controlling investment.

Section 5.58(g)(1) provides for an expedited notice procedure for pass-through investments in entities holding assets in satisfaction of debts previously contracted. A Federal savings association will not be required to file a notice or application under § 5.58 when acquiring a non-controlling investment in shares of a company through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted.

Under § 5.58, Federal savings associations will be permitted to make non-controlling investments greater than 25 percent of the company's equity. The investment, however, will constitute ''control,'' making the enterprise a subsidiary of the association and triggering a filing. Section 5.58(f)(2) provides that a Federal savings association must submit an application for approval prior to investing in an enterprise that is considered a subsidiary of the Federal savings association that would not be an operating subsidiary or a service corporation.

Section 5.58 changes the filing requirements for Federal savings associations' non-controlling investments. Some pass-through investments will meet the requirements for the after-the-fact notice procedure, and only the after-the-fact notice will be required. Some non-controlling investments that qualify for the no-notice procedure under § 160.32(b) will require a filing under § 5.58. Section 5.58(h) will continue the no-notice procedure for investments by Federal savings associations in investment companies that held assets permissible to be held directly. Some investments

that may have qualified for the no-notice procedure may be eligible for the after-the-fact notice of § 5.58(e).

Change in Asset Composition

The final rule expands the requirements of § 5.53 and removes § 163.22 regarding change in asset composition. Institutions contemplating transactions that may constitute a material change will be advised to consult the appropriate OCC supervisory office. National banks will find more situations in which applications for approval are required than under current § 5.53, but these additional situations likely already will involve discussions between the bank and its supervisory office. Federal savings associations will find fewer situations in which applications for approval are required than now required under current § 163.22(c).

Under the application exception for asset changes that are part of a voluntary liquidation, the final rule adds that the bank or savings association must have received OCC approval of its plan of liquidation.

The expedited treatment under § 163.22(c) for of bulk transfer filings if all of the participating Federal savings associations meet the conditions for expedited treatment is not carried over into § 5.53.

Business Combinations

Section 5.33(d)(2)(v) expands the definition of ''business combination'' in § 5.33(d)(2), which currently includes only the assumption of deposit liabilities from another depository institution, to also include the assumption, from a credit union or any other institution that is not FDIC-insured, of deposit accounts or other liabilities that will become deposits at the assuming national bank or Federal savings association. Federal savings associations are currently required to file an application under § 163.22(c). The final rule retains the requirement and expands it to cover national banks.

The final rule amends § 5.33(e)(3) to require that the business combination application identify financial subsidiary investments, bank service company investments, service corporation investments, and other equity investments in addition to subsidiaries, and provide an analysis of the permissibility for the national bank or Federal savings association to hold the subsidiary or investment.

Under § 5.33(e)(6), regarding the exercise of fiduciary powers by the resulting national bank or Federal savings association, a clarification is made that if the applicant intends to exercise fiduciary powers after the combination and requires OCC approval for such powers, it must include in the business combination application the information required in § 5.26 for a request for fiduciary powers.

Section 5.33(f)(1) is amended to clarify that the requirement of public notice and comment would apply only when the application is subject to a public notice requirement under the Bank Merger Act or other applicable statute that requires notice to the public. This publication requirement is not a change for national banks or Federal savings associations. The frequency and timing of publication for transactions that are subject to the Bank Merger Act are changed for Federal savings associations. Section 163.22(e)(1)(i) requires an initial publication and then publication on a weekly basis during the public comment period. Under § 5.33(f)(1), the OCC will require the initial publication and two other publications during the standard 30-day public comment period.

Section 5.33(g)(1), addressing the merger or consolidation of a national bank or a state bank into a national bank, requires that a national bank that will not be the resulting bank in a merger or consolidation with another national bank file a notice to the OCC under § 5.33(k). This notice will also be required whenever a national bank or Federal savings association merges or consolidates into another institution. It provides the OCC information about the target national bank's compliance with requirements to ''merge-out'' and sets in motion the steps for the disappearing national bank to end its separate existence.

Section 5.33(g)(2)(ii), under which the OCC may conduct an appraisal of dissenters' shares of stock in a national bank involved in a consolidation with a Federal savings association if all the parties agree, is changed from a voluntary to a required process. Sections 5.33(g)(2)(ii)(A) and (B) specify the process for appraisal of dissenters' shares of stock in a stock Federal savings association involved in a consolidation or merger into a national bank.

Section 5.33(g)(2)(iii) includes a requirement that a consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution.

New § 5.33(g)(3), addressing consolidations and mergers of other institutions into a Federal savings association, requires an application to the OCC and compliance with requirements and procedures similar to those currently imposed on them. If a combination involves a whole purchase and assumption of a Federal savings association, then the combination will be treated as a consolidation for participating Federal savings associations, and the procedural requirements in § 5.33(o) will apply.

Section 5.33(g)(3)(ii) includes a requirement that the consolidation or merger agreement must address the effect upon and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution.

Section 5.33(g)(6)(iv) includes a requirement that the consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution. This requirement is based on provisions in §§ 146.2(b)(9) and 152.13(f)(9).

Section 5.33(g)(7) addresses a consolidation or merger of a Federal savings association into a state bank, state savings bank, state savings association, state trust company, or credit union and requires only a notice to the OCC, not application and approval. This requirement is a change for Federal savings associations from § 163.22(c), under which an application is required for a combination with an uninsured bank, savings association or trust company or a credit union. Section 5.33(g)(7)(ii) includes a provision under which a whole purchase and assumption of the target Federal savings association will be treated as a consolidation for the Federal savings association, so that the procedural requirements in § 5.33(o) will apply.

Section 5.33(g)(7)(iii) sets out the process for appraisal of dissenters' shares of stock in a stock Federal savings association involved in a consolidation or merger into a state bank, state savings bank, state savings association, state trust company, or credit union. Section 5.33(g)(7)(iv) requires that the consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution.

Section 5.33(i), which provides for expedited review of business reorganizations and streamlined applications, is expanded to include Federal savings association applications. Expedited review under § 5.33(j) replaces the automatic approval provision in § 163.22(f) for Federal savings associations, which provides that an application is deemed to be

approved automatically 30 days after the OCC sends the applicant a written notice that the application is complete.

New § 5.33(k) addresses notices to be filed when a national bank or Federal savings association is consolidating or merging with another national bank or Federal savings association or with a state chartered institution or credit union and the target national bank or Federal savings association is not the resulting institution. It includes the steps to be taken to terminate the institution's status as a national bank or Federal savings association. This consolidates requirements from §§ 5.33(g)(3), 146.2(g), 152.13(k), 163.22(b), and 163.22(h)(1)(i) and (ii). There is no change for Federal savings associations, but national banks will be required to include more information in the notice than currently required.

Section 5.33(m) addresses certification of a consolidation or merger and documentation of its effective date. The applicant will be required to submit information showing that all steps needed to complete the transaction have been met and to notify the OCC of the planned consummation date. This reflects current OCC practice for national banks. It accomplishes through an applicant notification letter and issuance of an OCC certification letter what § 152.13(j) does in requiring the applicant to submit two sets of ''Articles of Combination'' that are filed with the OCC, and then endorsed by the OCC, with one set returned to the applicant with a specification of the effective date.

New § 5.33(o) includes provisions from §§ 146.2 and 152.13 that set out the procedural requirements for board, shareholder (in the case of stock savings associations), and, if required by the OCC, voting member (in the case of mutual savings associations) approval of business combinations involving the Federal savings association.

Changes in Permanent Capital

Section 5.46(g)(1) is amended to describe more fully those increases in permanent capital of a national bank for which an application and prior approval are not required and when such increases are considered approved by the OCC. Portions of this requirement are currently in paragraph (i)(3), which addresses the bank's notification to the OCC that the increase has occurred and the certification of the increase by the OCC.

Subordinated Debt

The expedited treatment process in part 116 for savings associations is replaced by the expedited review process in part 5 for Federal savings associations seeking expedited review of filings to issue subordinated debt. This could result in a change in which savings associations qualify for the expedited process, due to the difference between the eligibility requirements for expedited review and the requirements for expedited treatment.

Capital Distributions

New § 5.55 contains Federal savings association procedures and standards for capital distributions currently found in part 163 and filing procedures based on provisions in part 5 regarding eligible savings associations and expedited review. A Federal savings association must be an ''eligible savings association'' in order to qualify for expedited review of filings for capital distributions. Because the eligibility requirements in part 5 and in the current Federal savings association rules are not identical, the part 5 eligibility requirements for expedited review may affect which Federal savings associations qualify for the expedited process.

Title of Information Collection: Comptroller's Licensing Rules.

OMB Control No: 1557–0014.

Frequency of Response: Event generated.

Affected Public: Businesses or other for-profit organizations.

Current Burden for the Comptroller's Licensing Rules:

Number of Respondents: 3,831.

Average Burden per Respondent: 3.18 hours.

Total Burden: 12,174 hours.

Burden Estimates for the Comptroller's Licensing Rules as Amended by the Final Rule:

Number of Respondents: 3,863.

Average Burden per Respondent: 3.16 hours.

Total Burden: 12,220 hours.

The change in burden for the collection is an overall increase of 46 hours, or 0.37 percent. The change in number of respondents is due to an increase in the number of regulated entities involved in licensing activities and the revisions to certain definitions. The change in burden per respondent is an overall decrease of .02 hours. This is a result of the combination of the expansion of national bank requirements to savings associations, the revision of requirements for both national banks and savings associations, the addition of exemptions, and the streamlining and elimination of unnecessary requirements.

The OCC requests comment on:

a. Whether the information collection is necessary for the proper performance of the OCC's functions, and how the instructions can be clarified so that information gathered has more practical utility;

b. The accuracy of the OCC's estimates of the burdens of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

VI. Redesignation Table

The following redesignation table is provided for reader reference. It lists the current savings association provision and identifies the provision in this final rule that replace it.

Subject	Former section No./guidance	New section No.
Application Processing Procedures:	Part 116	Part 5, subpart A. *See also* relevant activity or transaction rule in part 5.
What does this part do?	116.1	5.1, 5.2.
Do the same procedures apply to all applications under this part?	116.5	5.2.
How does the OCC compute time periods under this part?	116.10	5.12.
Must I meet with the OCC before I file my application?	116.15	5.4(f).
What information must I include in my draft business plan?	116.20	*See* 5.4(f).
What type of application must I file?	116.25	*See* 5.4.
What information must I provide with my application?	116.30	*See* 5.4 (e).
May I keep portions of my application confidential?	116.35	5.9.

Subject	Former section No./guidance	New section No.
Where do I file my application?	116.40	5.4(d).
What is the filing date of my application?/Filing fees	116.45	*See* 5.12.
How do I amend or supplement my application?	116.47	None.
Public notice	116.50–116.80	5.8.
Comment procedures: What does this subpart do?	116.100	None.
Public comment	116.110–116.140	5.10.
Meeting procedures: What does this subpart do?	116.160	None.
When will the OCC conduct a meeting on an application?	116.170	5.11.
What procedures govern the conduct of a meeting?	116.180	5.11.
Will the OCC approve or disapprove an application at a meeting?	116.185	None.
Will a meeting affect application processing time frames?	116.190	*See* 5.10(b)(2), 5.11(h), and 5.13(a)(2).
If I file a notice under expedited treatment, when may I engage in the proposed activities?.	116.200	*See* relevant activity or transaction rule in part 5.
What will the OCC do after I file my application?	116.210	5.13.
If the OCC requests additional information to complete my application, how will it process my application?.	116.220	5.13.
Will the OCC conduct an eligibility examination?	116.230	5.7.
What may the OCC require me to do after my application is deemed complete?.	116.240	5.8(g), 5.13(c).
Will the OCC require me to publish a new public notice?	116.250	5.8(g).
May the OCC suspend processing of my application?	116.260	None.
How long is the OCC review period?	116.270	5.13; *See also* relevant activity or transaction rule in part 5.
How will I know if my application is approved?	116.280	5.13(d).
What will happen if the OCC does not approve or disapprove my application within two calendar years after the filing date?.	116.290	*See* 5.13(c).
Federal Mutual Savings Associations—Incorporation, Organization, and Conversion.	Part 143	5.20; 5.42.
Corporate title	143.1	5.20(f)(2(i)), 5.42.
Application for permission to organize	143.2	5.20.
''De novo'' applications for a Federal savings association charter	143.3	5.20.
Issuance of charter	143.4	None.
Completion of organization	143.5	5.20.
Limitations on transaction of business	143.6	None.
Federal savings association created in connection with an association in default or in danger of default.	143.7	None.
Conversions	143.8–143.10	5.23.
Organization plan for governance during first years after issuance of Federal mutual savings bank charter.	143.11	None.
Continuity of existence	143.14	5.23.
Federal Mutual Savings Associations—Charter and Bylaws	144	5.21.
Federal mutual charter	144.1	5.21(e).
Charter amendments	144.2	5.21(f)–(h).
Issuance of charter	144.4	None.
Federal mutual savings association bylaws	144.5	*See* 5.21(j).
Effect of subsequent charter of bylaw change	144.6	5.21(j)(5).
Availability—in association offices	144.7	5.21(i).
Communication between members of a Federal mutual savings association.	144.8	144.8.
Federal Savings Associations—Operations	Part 145	5.31, 5.40, 5.52.
Home office	145.91(a)	None.
	145.91(b)	5.52.
Branch offices	145.92	5.31.
Application and notice requirements and processing procedures for branch and home offices.	145.93, 145.95	5.31 (branch office) 5.40 (home office).
Agency office	145.96	5.31(k).
Federal Mutual Savings Associations—Merger, Dissolution, Reorganization, and Conversion.	Part 146	5.33, 5.48.
Definitions, procedures, and transfer of assets upon merger or consolidation.	146.1–146.3	5.33.
Voluntary dissolution	146.4	5.48.
Fiduciary Powers of Federal Savings Associations	Part 150, subpart A	5.26.
Obtaining fiduciary powers: Must I obtain OCC approval or file a notice before I exercise fiduciary powers?.	150.70	150.70 (revised), 5.26.
Obtaining fiduciary powers	150.80–150.125	5.26.
Federal Stock Associations—Incorporation, Organization, and Conversion.	Part 152	5.20, 5.22, 5.23, 5.24, 5.25, 5.33.
Procedure for organization of Federal stock association	152.1	5.20.
Procedures for organization of interim Federal stock association	152.2	5.33(e)(4).
Charters, bylaws, boards of directors and officers, share certificates, and books and records.	152.3–152.11	5.22.
Business combinations	152.13–152.15	5.33.
Effect of subsequent charter or bylaw change	152.16	5.22(j)(4).

Subject	Former section No./guidance	New section No.
Federal stock association created in connection with an association in default or in danger of default.	152.17	None.
Conversion from stock form depository institution to Federal stock association.	152.18	5.23.
Conversion to National banking association or state bank	152.19	5.24 (to national bank). 5.25 (to state bank).
Subordinate organizations	159 (159.1–159.13)	5.38 (operating subsidiaries). 5.59 (service corporations).
Lending and investment.		
Pass-through investments	160.32, except:	5.58.
	160.32(a)	160.32(a) (same).
	160.32(b)	160.32(b) (revised).
Real estate for office and related facilities	160.37	5.37, 7.1000, 7.3001.
Savings Associations—Operations.		
Submission for approval of chartering documents	163.1(a)	*See* 5.20(e)(1)(iii)(A).
Availability of chartering documents	163.1(b)	None (Federal stock savings associations). 5.21(i) (Federal mutual savings associations).
Merger, consolidation, purchase or sale of assets, or assumption of liabilities.	163.22	5.33, 5.53.
Conversion to state bank	163.22(b)(1)(ii)	5.25.
Conversion to national bank	163.22(b)(2)	5.24.
Inclusion of subordinated debt securities and mandatorily redeemable preferred stock as supplementary capital.	163.81	5.56.
Capital Distributions	163.140–163.146 (subpart E)	5.55.
Management and financial policies	163.161	5.59 (e)(7) (service corporations only).
Notice of change of director or senior executive officer	163.550–163.590 (subpart H)	5.51.
Acquisition of Control of Federal Savings Associations	174.1–174.7	5.50.
	174, Appendix A	None.

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Computer technology, Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 14

Banks, Banking, Consumer protection, Insurance, National banks, Reporting and recordkeeping requirements.

12 CFR Part 24

Affordable housing, Community development, Credit, Investments, Economic development and job creation, Low- and moderate-income areas, Low and moderate income housing, National banks, Public welfare investments, Reporting and recordkeeping requirements, Rural areas, Small businesses, Tax credit investments.

12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 100

Savings associations.

12 CFR Part 116

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 143

Reporting and recordkeeping requirements; Savings associations.

12 CFR Part 144

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 145

Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 146

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 150

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations, Trusts and trustees.

12 CFR Part 152

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 159

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

12 CFR Part 160

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 161

Administrative practice and procedure, Savings associations.

12 CFR Part 162

Accounting, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 163

Accounting, Administrative practice and procedure, Advertising, Conflict of interests, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping

requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 174

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 192

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 193

Accounting, Savings associations, Securities.

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS

■ 1. The authority citation for part 4 is revised to read as follows:

Authority: 12 U.S.C. 1, 12 U.S.C. 93a, 12 U.S.C. 5321, 12 U.S.C. 5412, and 12 U.S.C. 5414. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a)(2) and (3), 1818(u) and (v), 1820(d)(6), 1820(k), 1821(c), 1821(o), 1821(t), 1831m, 1831p–1, 1831o, 1867, 1951 *et seq.,* 2601 *et seq.,* 2801 *et seq.,* 2901 *et seq.,* 3101 *et seq.,* 3401 *et seq.;* 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e. Subpart E is also issued under 12 U.S.C. 1820(k).

■ 2. Revise § 4.5 to read as follows:

§ 4.5 Other OCC supervisory offices.

(a) *Midsize Bank Supervision (MBS).* Midsize Bank Supervision is responsible for supervising midsize national banks and Federal savings associations that present unique supervisory challenges based on size, complexity, and/or product line. MBS also supervises credit card and certain other special purpose banks. MBS is headquartered in Chicago, IL and located at 1 South Wacker Drive, Suite 2000, Chicago, IL 60606.

(b) District *offices.* Each district office of the OCC is responsible for the direct supervision of the national banks and Federal savings associations in its district, with the exception of the national banks and Federal savings associations supervised by the Washington office pursuant to § 4.4 of this part or Midsize Bank Supervision pursuant to § 4.5(a). The four district offices cover the United States, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. The geographical composition of each district follows:

District	Office location	Geographical composition
Northeastern District	Office of the Comptroller of the Currency, 340 Madison Avenue, 5th Floor, New York, NY 10173–0002.	Connecticut, Delaware, District of Columbia, northeast Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, the Virgin Islands, Virginia, and West Virginia.
Central District	Office of the Comptroller of the Currency, One Financial Place, Suite 2700, 440 South LaSalle Street, Chicago, IL 60605.	Illinois, Indiana, central and southern Kentucky, Michigan, northern and eastern Minnesota, eastern Missouri, North Dakota, Ohio, and Wisconsin.
Southern District	Office of the Comptroller of the Currency, 500 North Akard Street, Suite 1600, Dallas, TX 75201.	Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas.
Western District	Office of the Comptroller of the Currency, 1225 17th Street, Suite 300, Denver, CO 80202.	Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Iowa, Kansas, southwestern Minnesota, western Missouri, Montana, Nebraska, Nevada, New Mexico, Northern Mariana Islands, Oregon, South Dakota, Utah, Washington, and Wyoming.

(c) *Field offices and other supervisory offices.* Field offices and other supervisory offices support the bank and savings association supervision responsibilities of the district offices.

§ 4.18 [Amended]

■ 3. Section 4.18(b) is amended by removing ''202 874–4700'' and adding in its place ''(202) 649–6700''.

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ 4. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24a, 93a, 215a–2, 215a–3, 481, 1462a, 1463, 1464, 2901 *et seq.,* 3907, and 5412(b)(2)(B).

■ 5. Section 5.1 is revised to read as follows:

§ 5.1 Scope.

This part establishes rules, policies and procedures of the Office of the Comptroller of the Currency (OCC) for corporate activities and transactions involving national banks and Federal savings associations. It contains information on rules of general and specific applicability, where and how to file, and requirements and policies applicable to filings. This part also establishes the corporate filing procedures for Federal branches and agencies of foreign banks.

■ 6. Subpart A of part 5 is revised to read as follows:

Subpart A—Rules of General Applicability

Sec.

Subpart A—Rules of General Applicability

§ 5.2 Rules of general applicability.

(a) *In general.* The rules in this subpart apply to all sections in this part unless otherwise stated.

(b) *Exceptions.* The OCC may adopt materially different procedures for a particular filing, or class of filings, in exceptional circumstances or for unusual transactions, after providing notice of the change to the applicant and to any other party that the OCC determines should receive notice.

(c) *Comptroller's Licensing Manual.* The ''Comptroller's Licensing Manual'' provides additional filing guidance, including policies and procedures. This Manual and sample forms are available on the OCC's Internet Web page at *www.occ.gov*.

(d) *Electronic filing.* The OCC encourages electronic filing for all filings. The Comptroller's Licensing Manual describes the OCC's electronic filing procedures.

§ 5.3 Definitions.

As used in this part:

(a) *Applicant* means a person or entity that submits a notice or application to the OCC under this part.

(b) *Application* means a submission requesting OCC approval to engage in various corporate activities and transactions.

(c) *Appropriate OCC licensing office* means the OCC office that is responsible for processing applications or notices to engage in various corporate activities or transactions, as described at *www.occ.gov*.

(d) *Appropriate OCC supervisory office* means the OCC office that is responsible for the supervision of a national bank or Federal savings association, as described in subpart A of 12 CFR part 4.

(e) *Capital and surplus* means:

(1) A bank's or Federal savings association's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in 12 CFR part 3, as applicable, as reported in the bank's or savings association's Consolidated Reports of Condition and Income (Call Reports) filed under 12 U.S.C. 161 or 12 U.S.C. 1464(v), respectively; plus

(2) The balance of the national bank's or Federal savings association's allowance for loan and lease losses not included in the institution's tier 2 capital, for purposes of the calculation of risk-based capital reported in the institution's Call Reports, described in paragraph (e)(1) of this section.

(f) *Depository institution* means any bank or savings association.

(g) *Eligible bank or eligible savings association* means a national bank or Federal savings association that:

(1) Is well capitalized as defined in 12 CFR 6.4;

(2) Has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS);

(3) Has a Community Reinvestment Act (CRA), 12 U.S.C. 2901 *et seq.,* rating of ''Outstanding'' or ''Satisfactory,'' if applicable;

(4) Has a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System; and

(5) Is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive (*see* 12 CFR part 6, subpart B) or, if subject to any such order, agreement, or directive, is informed in writing by the OCC that the bank or savings association may be treated as an ''eligible bank or eligible savings association'' for purposes of this part.

(h) *Eligible depository institution* means:

(1) With respect to a national bank, a state bank or a Federal or state savings association that meets the criteria for an ''eligible bank or eligible savings association'' under § 5.3(g) and is FDIC-insured; and

(2) With respect to a Federal savings association, a state or national bank or a state savings association that meets the criteria for an ''eligible bank or eligible savings association'' under § 5.3(g) and is FDIC-insured.

(i) *Filing* means an application or notice submitted to the OCC under this part.

(j) *Notice,* in general, means a submission notifying the OCC that a national bank or Federal savings association intends to engage in or has commenced certain corporate activities or transactions. The specific meaning of *notice* depends on the context of the rule in which it is used and may require the filer to obtain prior OCC approval before engaging in the activity or transaction, may provide the OCC with authority to disapprove the notice, or may be informational requiring no official OCC action.

(k) *Principal city* means an area designated as a ''principal city'' by the Office of Management and Budget.

(l) *Short-distance relocation* means moving the premises of a branch or main office of a national bank or a branch or home office of a Federal savings association within a:

(1) One thousand foot-radius of the site if the branch, main office, or home office is located within a principal city of an MSA;

(2) One-mile radius of the site if the branch, main office, or home office is not located within a principal city, but is located within an MSA; or

(3) Two-mile radius of the site if the branch, main office, or home office is not located within an MSA.

§ 5.4 Filing required.

(a) *Filing.* A depository institution shall file an application or notice with the OCC to engage in corporate activities and transactions as described in this part.

(b) *Availability of forms.* Forms and instructions for filing are available on the OCC's Internet Web page at *www.occ.gov*.

(c) *Other agency's applications or filings.* At the request of the applicant, the OCC may accept an application or other filing submitted to another Federal agency that covers the proposed action or transaction and contains substantially the same information as required by the OCC. The OCC also may require the applicant to submit supplemental information.

(d) *Where to file.* An applicant should address a filing or other submission under this part to the appropriate OCC licensing office or appropriate OCC supervisory office, unless the OCC advises an applicant otherwise. Relevant addresses are listed on the OCC's Internet Web page at *www.occ.gov*.

(e) *Incorporation of other material.* An applicant may incorporate any material contained in any other application or filing filed with the OCC or other Federal agency by reference, provided that the material is attached to the application and is current and responsive to the information requested by the OCC. The filing must clearly indicate that the information is so incorporated and include a cross-reference to the information incorporated.

(f) *Prefiling meeting.* When submitting an application to the OCC, an applicant is encouraged to contact the appropriate OCC licensing office to determine the need for a prefiling meeting. The OCC decides whether to require a prefiling meeting on a case-by-case basis. Submission of a draft business plan or other relevant information before any prefiling meeting may expedite the filing review process. Information on model business plans can be found in the Comptroller's Licensing Manual.

§ 5.5 Filing fees.

(a) *Procedure.* An applicant shall submit the appropriate filing fee, if any, in connection with its filing. Filing fees may be paid by check, money order,

cashier's check, or wire transfer. Additional information on filing fees, including where to file, can be found in the Comptroller's Licensing Manual. The OCC generally does not refund the filing fees.

(b) *Fee schedule.* The OCC publishes a fee schedule in the ''Notice of Comptroller of the Currency Fees,'' as described in 12 CFR 8.8.

§ 5.6 [Reserved]

§ 5.7 Investigations.

(a) *Authority.* The OCC may examine or investigate and evaluate facts related to a filing to the extent necessary to reach an informed decision.

(b) *Fees.* As described in 12 CFR 8.6, the OCC may assess fees for investigations or examinations conducted under paragraph (a) of this section. The OCC publishes a fee schedule in the ''Notice of Comptroller of the Currency Fees,'' as described in 12 CFR 8.8.

§ 5.8 Public notice.

(a) *In general.* An applicant shall publish a public notice of its filing in a newspaper of general circulation in the community in which the applicant proposes to engage in business, on the date of filing, or as soon as practicable before or after the date of filing. This notice shall be published in the English language but if the OCC determines that the primary language of a significant number of adult residents of the community is a language other than English, the OCC may require that an additional notice(s) simultaneously be published in the community in the appropriate language(s).

(b) *Contents of the public notice.* The public notice shall state that a filing is being made, the date of the filing, the name and address of the applicant, the subject matter of the filing (including the name of the institution that is the subject of the filing), that the public may submit comments to the appropriate OCC licensing office, the address of the appropriate OCC licensing office where comments should be sent, the closing date of the public comment period, that the public portion of the filing is available on request, and any other information that the OCC requires.

(c) *Confirmation of public notice.* Promptly following publication, the applicant shall mail or otherwise deliver to the appropriate OCC licensing office a statement containing the date of publication, the name and address of the newspaper that published the public notice, a copy of the public notice, and any other information that the OCC requires.

(d) *Multiple transactions.* The OCC may consider more than one transaction, or a series of transactions, to be a single filing for purposes of the publication requirements of this section. When filing a single public notice for multiple transactions, the applicant shall explain in the notice how the transactions are related.

(e) *Joint public notices accepted.* Upon the request of an applicant, for a transaction subject to a public notice requirement of both the OCC and another Federal agency, the OCC may accept publication of a single joint notice containing the information required by both the OCC and the other Federal agency, provided that the notice states that comments must be submitted to both the OCC and, if applicable, the other Federal agency.

(f) *Public notice by the OCC.* In addition to the foregoing, the OCC may require or give public notice and request comment on any filing and in any manner the OCC determines appropriate for the particular filing.

(g) *New public notice.* At the OCC's discretion, an applicant may be required to publish a new public notice if:

(1) The applicant submits either a revised filing or new or additional information related to a filing;

(2) A major issue of law or change in circumstance arises after a filing; or

(3) The OCC determines that a new public notice is appropriate.

§ 5.9 Public availability.

(a) *In general.* The OCC provides a copy of the public file to any person who requests it. A requestor should submit a written request for the public file concerning a pending filing to the appropriate OCC licensing office. A requestor should submit a written request for the public file concerning a decided or closed filing to the OCC's Freedom of Information Act Officer, Communications Division, at the address listed on *www.occ.gov*. The OCC may impose a fee in accordance with 12 CFR 4.17 and at the rate the OCC publishes in the ''Notice of Comptroller of the Currency Fees,'' described in 12 CFR 8.8.

(b) *Public file.* A public file consists of the portions of the filing, supporting data, supplementary information, and information submitted by interested persons, to the extent that those documents have not been afforded confidential treatment. Applicants and other interested persons may request that confidential treatment be afforded information submitted to the OCC pursuant to paragraph (c) of this section.

(c) *Confidential treatment.* The applicant or an interested person submitting information may request that specific information be treated as confidential under the Freedom of Information Act, 5 U.S.C. 552 (*see* 12 CFR 4.12(b)). A submitter should draft its request for confidential treatment narrowly to extend only to those portions of a document it considers confidential. If a submitter requests confidential treatment for information that the OCC does not consider to be confidential, the OCC may include that information in the public file after providing notice to the submitter. Moreover, at its own initiative, the OCC may determine that certain information should be treated as confidential and withhold that information from the public file. A person requesting information withheld from the public file should submit the request to the OCC's Freedom of Information Act Officer, Communications Division, under the procedures described in 12 CFR part 4, subpart B. That request may be subject to the predisclosure notice procedures of 12 CFR 4.16.

§ 5.10 Comments.

(a) *Submission of comments.* During the comment period, any person may submit written comments on a filing to the appropriate OCC licensing office.

(b) *Comment period*—(1) *In general.* Unless otherwise stated, the comment period is 30 days after publication of the public notice required by § 5.8(a). If a new public notice is required under § 5.8(g), the OCC may require a new comment period of up to 30 days after publication of the new public notice.

(2) *Extension.* The OCC may extend a comment period if:

(i) The applicant fails to file all required publicly available information on a timely basis to permit review by interested persons or makes a request for confidential treatment not granted by the OCC that delays the public availability of that information;

(ii) Any person requesting an extension of time satisfactorily demonstrates to the OCC that additional time is necessary to develop factual information that the OCC determines is necessary to consider the application; or

(iii) The OCC determines that other extenuating circumstances exist.

(3) *Applicant response.* The OCC may give the applicant an opportunity to respond to comments received.

§ 5.11 Hearings and other meetings.

(a) *Hearing requests.* Prior to the end of the comment period, any person may submit to the appropriate OCC office a written request for a hearing on a filing. The request must describe the nature of the issues or facts to be presented and

the reasons why written submissions would be insufficient to make an adequate presentation of those issues or facts to the OCC. A person requesting a hearing shall simultaneously submit a copy of the request to the applicant.

(b) *Action on a hearing request.* The OCC may grant or deny a request for a hearing and may limit the issues to those it deems relevant or material. The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decision-making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

(c) *Denial of a hearing request.* If the OCC denies a hearing request, it shall notify the person requesting the hearing of the reason for the denial.

(d) *OCC procedures prior to the hearing*—(1) *Notice of hearing.* The OCC issues a Notice of Hearing if it grants a request for a hearing or orders a hearing because it is in the public interest. The OCC sends a copy of the Notice of Hearing to the applicant, to the person requesting the hearing, and anyone else requesting a copy. The Notice of Hearing states the subject and date of the filing, the time and place of the hearing, and the issues to be addressed. The OCC may limit the issues considered at a hearing to those it determines are relevant or material.

(2) *Presiding officer.* The OCC appoints a presiding officer to conduct the hearing. The presiding officer is responsible for all procedural questions not governed by this section.

(e) *Participation in the hearing.* Any person who wishes to appear (participant) shall notify the appropriate OCC licensing office of his or her intent to participate in the hearing within 10 days from the date the OCC issues the Notice of Hearing. At least five days before the hearing, each participant shall submit to the appropriate OCC licensing office, the applicant, and any other person the OCC requires, the names of witnesses and one copy of each exhibit the participant intends to present.

(f) *Hearing transcripts.* The OCC arranges for a hearing transcript. The person requesting the hearing may be required to bear the cost of one copy of the transcript for his or her use.

(g) *Conduct of the hearing*—(1) *Presentations.* Subject to the rulings of the presiding officer, the applicant and participants may make opening statements and present witnesses, material, and data.

(2) *Information submitted.* A person presenting documentary material shall furnish one copy to the OCC and one copy to the applicant and each participant.

(3) *Laws not applicable to hearings.* The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Federal Rules of Evidence (28 U.S.C. appendix), the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 *et seq.*), and the OCC's Rules of Practice and Procedure (12 CFR part 19) do not apply to hearings under this section.

(h) *Closing the hearing record.* At the applicant's or participant's request, the OCC may keep the hearing record open for up to 14 days following the OCC's receipt of the transcript. The OCC resumes processing the filing after the record closes.

(i) *Other meetings*—(1) *Public meetings.* The OCC may arrange for a public meeting in connection with an application, either upon receipt during the comment period of a written request for such a meeting or upon the OCC's own initiative, if the OCC finds that written submissions are insufficient to address facts or issues raised in the application or otherwise determines that a meeting will benefit the decision-making process. Public meetings will be arranged and presided over by a presiding officer.

(2) *Private meetings.* The OCC may arrange a meeting with an applicant or other interested parties to clarify and narrow the issues and to facilitate the resolution of the issues.

(3) *Issues at meetings.* The OCC may limit the issues considered at a meeting to those it determines are relevant or material.

(4) *Meeting format.* The OCC may conduct a meeting in the format that it determines is appropriate, including a telephone conference, a face-to-face meeting, or a more formal meeting.

§ 5.12 Computation of time.

In computing the period of days, the OCC does not include the day of the act or event (*e.g.,* the date an application is received by the OCC) from which the period begins to run. When the last day of a time period is a Saturday, Sunday, or Federal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday or Federal holiday.

§ 5.13 Decisions.

(a) *In general.* The OCC may approve, conditionally approve, or deny a filing after appropriate review and consideration of the record. In reviewing a filing, the OCC may consider the activities, resources, or condition of an affiliate of the applicant that may reasonably reflect on or affect the applicant. It also may consider information available from any source, including any comments submitted by interested parties or views expressed by interested parties at meetings with the OCC.

(1) *Conditional approval.* The OCC may impose conditions on any approval, including to address a significant supervisory, CRA (if applicable), or compliance concern, if the OCC determines that the conditions are necessary or appropriate to ensure that approval is consistent with relevant statutory and regulatory standards and OCC policies thereunder and safe and sound banking practices.

(2) *Expedited review.* The OCC grants eligible banks and eligible savings associations expedited review within a specified time after filing or commencement of the public comment period.

(i) The OCC may extend the expedited review period or remove a filing from expedited review procedures if it concludes that the filing, or an adverse comment regarding the filing, presents a significant supervisory, CRA (if applicable), or compliance concern, or raises a significant legal or policy issue, requiring additional OCC review. The OCC will provide the applicant with a written explanation if it decides not to process an application from an eligible bank or eligible savings association under expedited review pursuant to this paragraph.

(ii) Adverse comments that the OCC determines do not raise a significant supervisory, CRA (if applicable), or compliance concern, or a significant legal or policy issue, or are frivolous, filed primarily as a means of delaying action on the filing, or that raise a CRA concern that the OCC determines has been satisfactorily resolved, do not affect the OCC's decision under paragraph (a)(2)(i) of this section. The OCC considers a CRA concern to have been satisfactorily resolved if the OCC previously reviewed (*e.g.,* in an examination or an application) a concern presenting substantially the same issue in substantially the same assessment area during substantially the same time, and the OCC determines that the concern would not warrant denial or imposition of a condition on approval of the application.

(iii) If a bank or savings association files an application for any activity or transaction that is dependent upon the approval of another application under this part, or if requests for approval for more than one activity or transaction are combined in a single application under applicable sections of this part, none of the subject applications may be deemed approved upon expiration of the

applicable time periods, unless all of the applications are subject to expedited review procedures and the longest of the time periods expires without the OCC issuing a decision or notifying the bank or savings association that the filings are not eligible for expedited review under the standards in paragraph (a)(2)(i) of this section.

(b) *Denial.* The OCC may deny a filing if:

(1) A significant supervisory, CRA (if applicable), or compliance concern exists with respect to the applicant;

(2) Approval of the filing is inconsistent with applicable law, regulation, or OCC policy thereunder; or

(3) The applicant fails to provide information requested by the OCC that is necessary for the OCC to make an informed decision.

(c) *Required information and abandonment of filing.* A filing must contain information required by the applicable section set forth in this part. To the extent necessary to evaluate an application, the OCC may require an applicant to provide additional information. The OCC may deem a filing abandoned if information required or requested by the OCC in connection with the filing is not furnished within the time period specified by the OCC. The OCC may return an application without a decision if it finds the filing to be materially deficient. A filing is materially deficient if it lacks sufficient information for the OCC to make a determination under the applicable statutory or regulatory criteria.

(d) *Notification of final disposition.* The OCC notifies the applicant, and any person who makes a written request, of the final disposition of a filing, including confirmation of an expedited review under this part. If the OCC denies a filing, the OCC notifies the applicant in writing of the reasons for the denial.

(e) *Publication of decision.* The OCC will issue a public decision when a decision represents a new or changed policy or presents issues of general interest to the public or the banking industry. In rendering its decisions, the OCC may elect not to disclose information that the OCC deems to be private or confidential.

(f) *Appeal.* An applicant may file an appeal of an OCC decision in writing with the Deputy Comptroller for Licensing or with the Ombudsman at the address listed on *www.occ.gov*. In the event that the Deputy Comptroller for Licensing was the deciding official of the matter appealed, or was involved personally and substantially in the matter, the appeal may be referred instead to the Chief Counsel or the Ombudsman.

(g) *Extension of time.* When the OCC approves or conditionally approves a filing, the OCC generally gives the applicant a specified period of time to commence that new or expanded activity. The OCC does not generally grant an extension of the time specified to commence a new or expanded corporate activity approved under this part, unless the OCC determines that the delay is beyond the applicant's control.

(h) *Nullifying a decision*—(1) *Material misrepresentation or omission.* An applicant shall certify that any filing or supporting material submitted to the OCC contains no material misrepresentations or omissions. The OCC may review and verify any information filed in connection with a notice or an application. If the OCC discovers a material misrepresentation or omission after the OCC has rendered a decision on the filing, the OCC may nullify its decision. Any person responsible for any material misrepresentation or omission in a filing or supporting materials may be subject to enforcement action and other penalties, including criminal penalties provided in 18 U.S.C. 1001.

(2) *Other nullifications.* The OCC may nullify any decision on a filing that is:

(i) Contrary to law, regulation, or OCC policy thereunder; or

(ii) Granted due to clerical or administrative error, or a material mistake of law or fact.

■ 7. Section 5.20 is revised to read as follows:

§ 5.20 Organizing a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 21, 22, 24(Seventh), 26, 27, 92a, 93a, 1814(b), 1816, 1462a, 1463, 1464, 2903, and 5412(b)(2)(B).

(b) *Licensing requirements.* Any person desiring to establish a national bank or a Federal savings association shall submit an application and obtain prior OCC approval.

(c) *Scope.* This section describes the procedures and requirements governing OCC review and approval of an application to establish a national bank or a Federal stock or mutual savings association, including a national bank or a Federal savings association with a special purpose. Information regarding an application to establish an interim national bank or an interim Federal savings association solely to facilitate a business combination is set forth in § 5.33.

(d) *Definitions.* For purposes of this section:

(1) *Bankers' bank* means a bank owned exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions or depository institution holding companies (as that term is defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813), the activities of which are limited by its articles of association exclusively to providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and to providing correspondent banking services at the request of other depository institutions or their holding companies.

(2) *Control* means with respect to an application to establish a national bank, control as used in section 2 of the Bank Holding Company Act, 12 U.S.C. 1841(a)(2), and with respect to an application to establish a Federal savings association, control as used in section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a(a)(2).

(3) *Final approval* means the OCC action issuing a charter and authorizing a national bank or Federal savings association to open for business.

(4) *Holding company* means any company that controls or proposes to control a national bank or a Federal savings association whether or not the company is a bank holding company under section 2 of the Bank Holding Company Act, 12 U.S.C. 1841(a)(1), or a savings and loan holding company under section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a.

(5) *Lead depository institution* means the largest depository institution controlled by a bank holding company or savings and loan holding company based on a comparison of the average total assets controlled by each depository institution as reported in its Consolidated Report of Condition and Income required to be filed for the immediately preceding four calendar quarters.

(6) *Institution* means either a national bank or Federal savings association.

(7) *Organizing group* means five or more persons acting on their own behalf, or serving as representatives of a sponsoring holding company, who apply to the OCC for a national bank or Federal savings association charter.

(8) *Preliminary approval* means a decision by the OCC permitting an organizing group to go forward with the organization of the proposed national bank or Federal savings association. A preliminary approval generally is subject to certain conditions that an applicant must satisfy before the OCC will grant final approval.

(e) *Requirements*—(1) *In general.* (i) The OCC charters a national bank under the authority of the National Bank Act of 1864, as amended, 12 U.S.C. 1 *et seq.* The bank may be a special purpose bank that limits its activities to fiduciary activities or to any other activities within the business of banking. A special purpose bank that conducts activities other than fiduciary activities must conduct at least one of the following three core banking functions: Receiving deposits; paying checks; or lending money. The name of a proposed national bank must include the word ''national.''

(ii) The OCC charters a Federal savings association under the authority of section 5 of the Home Owners' Loan Act, 12 U.S.C. 1464, which in an application to establish a Federal savings association requires the OCC to consider:

(A) Whether the applicants are persons of good character and responsibility;

(B) Whether a necessity exists for the association in the community to be served;

(C) Whether there is a reasonable probability of the association's usefulness and success; and

(D) Whether the association can be established without undue injury to properly conducted existing local savings associations and home financing institutions.

(iii) In determining whether to approve an application to establish a national bank or Federal savings association, the OCC verifies that the proposed national bank or Federal savings association has complied with the following requirements. A national bank or a Federal savings association shall:

(A) File either articles of association (for a national bank), or a charter and by-laws (for a Federal savings association) with the OCC;

(B) In the case of an application to establish a national bank, file an organization certificate containing specified information with the OCC;

(C) Ensure that all capital stock is paid in, or in the case of a Federal mutual savings association, ensure that at least a minimum amount of capital is paid in; and

(D) Have at least five elected directors.

(2) *Community Reinvestment Act.* (i) Twelve CFR part 25 requires the OCC to take into account a proposed insured national bank's description of how it will meet its CRA objectives.

(ii) Twelve CFR part 195 requires the OCC to take into account a proposed insured Federal savings association description of how it will meet its CRA objectives.

(3) *Federal Deposit Insurance.* Preliminary approval for an application to establish a Federal savings association will be conditioned on the savings association applying for and receiving approval for deposit insurance from the Federal Deposit Insurance Corporation (FDIC). Final approval for an application to establish a Federal savings association will not be issued until receipt by the OCC of written confirmation by the FDIC that the accounts of the Federal savings association will be insured by the FDIC.

(f) *Policy*—(1) *In general.* In determining whether to approve an application to establish a national bank or Federal savings association, the OCC is guided by the following principles:

(i) Maintaining a safe and sound banking system;

(ii) Encouraging a national bank or Federal savings association to provide fair access to financial services by helping to meet the credit needs of its entire community;

(iii) Ensuring compliance with laws and regulations; and

(iv) Promoting fair treatment of customers including efficiency and better service.

(2) *Policy considerations.* (i) In evaluating an application to establish a national bank or Federal savings association, the OCC considers whether the proposed institution:

(A) Has organizers who are familiar with national banking laws and regulations or Federal savings association laws and regulations, respectively;

(B) Has competent management, including a board of directors, with ability and experience relevant to the types of services to be provided;

(C) Has capital that is sufficient to support the projected volume and type of business;

(D) Can reasonably be expected to achieve and maintain profitability;

(E) Will be operated in a safe and sound manner; and

(F) Does not have a title that misrepresents the nature of the institution or the services it offers.

(ii) In evaluating an application to establish a Federal savings association, the OCC considers whether the proposed Federal savings association will be operated as a qualified thrift lender under section 10(m) of the Home Owners' Loan Act, 12 U.S.C. 1467a(m).

(iii) The OCC may also consider additional factors listed in section 6 of the Federal Deposit Insurance Act, 12 U.S.C. 1816, including the risk to the Federal deposit insurance fund, and whether the proposed institution's corporate powers are consistent with the purposes of the Federal Deposit Insurance Act, the National Bank Act, and the Home Owners' Loan Act, as applicable.

(3) *OCC evaluation.* The OCC evaluates a proposed institution's organizing group and its business plan or operating plan together. The OCC's judgment concerning one may affect the evaluation of the other. An organizing group and its business plan or operating plan must be stronger in markets where economic conditions are marginal or competition is intense.

(g) *Organizing group*—(1) *In general.* Strong organizing groups generally include diverse business and financial interests and community involvement. An organizing group must have the experience, competence, willingness, and ability to be active in directing the proposed institution's affairs in a safe and sound manner. The institution's initial board of directors generally is comprised of many, if not all, of the organizers. The business plan or operating plan and other information supplied in the application must demonstrate an organizing group's collective ability to establish and operate a successful national bank or Federal savings association in the economic and competitive conditions of the market to be served. Each organizer should be knowledgeable about the business plan or operating plan. A poor business plan or operating plan reflects adversely on the organizing group's ability, and the OCC generally denies applications with poor business plans or operating plans.

(2) *Management selection.* The initial board of directors must select competent senior executive officers before the OCC grants final approval. Early selection of executive officers, especially the chief executive officer, contributes favorably to the preparation and review of a business plan or operating plan that is accurate, complete, and appropriate for the type of national bank or Federal savings association proposed and its market, and reflects favorably upon an application. As a condition of the charter approval, the OCC retains the right to object to and preclude the hiring of any officer, or the appointment or election of any director, for a two-year period from the date the institution commences business, or longer as appropriate.

(3) *Financial resources.* (i) Each organizer must have a history of responsibility, personal honesty, and integrity. Personal wealth is not a prerequisite to become an organizer or director of a national bank or Federal

savings association. However, directors' stock purchases, or, in the case of a Federal mutual savings association, capital contributions, individually and in the aggregate, should reflect a financial commitment to the success of the institution that is reasonable in relation to their individual and collective financial strength. A director should not have to depend on institution dividends, fees, or other compensation to satisfy financial obligations.

(ii) Because directors are often the primary source of additional capital for an institution not affiliated with a holding company, it is desirable that the proposed directors of the national bank or Federal savings association, as a group, be able to supply or have a realistic plan to enable the institution to obtain capital when needed.

(iii) Any financial or other business arrangement, direct or indirect, between the organizing group or other insiders and the proposed national bank or Federal savings association must be on nonpreferential terms.

(4) *Organizational expenses.* (i) Organizers are expected to contribute time and expertise to the organization of the national bank or Federal savings association. Organizers should not bill excessive charges to the institution for professional and consulting services or unduly rely upon these fees as a source of income.

(ii) A proposed national bank or Federal savings association shall not pay any fee that is contingent upon an OCC decision. Such action generally is grounds for denial of the application or withdrawal of preliminary approval. Organizational expenses for denied applications are the sole responsibility of the organizing group.

(5) *Sponsor's experience and support.* A sponsor must be financially able to support the new institution's operations and to provide or locate capital when needed. The OCC primarily considers the financial and managerial resources of the sponsor and the sponsor's record of performance, rather than the financial and managerial resources of the organizing group, if an organizing group is sponsored by:

(i) An existing holding company;

(ii) Individuals currently affiliated with other depository institutions; or

(iii) Individuals who, in the OCC's view, are otherwise collectively experienced in banking and have demonstrated the ability to work together effectively.

(h) *Business plan or Operating plan*—(1) *In general.* (i) Organizers of a proposed national bank or Federal savings association shall submit a business plan or operating plan that adequately addresses the statutory and policy considerations set forth in paragraphs (e) and (f)(2) of this section. In the case of a proposed Federal savings association the plan must also specifically address meeting qualified thrift lender requirements. The plan must reflect sound banking principles and demonstrate realistic assessments of risk in light of economic and competitive conditions in the market to be served.

(ii) The OCC may offset deficiencies in one factor by strengths in one or more other factors. However, deficiencies in some factors, such as unrealistic earnings prospects, may have a negative influence on the evaluation of other factors, such as capital adequacy, or may be serious enough by themselves to result in denial. The OCC considers inadequacies in a business plan or operating plan to reflect negatively on the organizing group's ability to operate a successful institution.

(2) *Earnings prospects.* The organizing group shall submit *pro forma* balance sheets and income statements as part of the business plan or operating plan. The OCC reviews all projections for reasonableness of assumptions and consistency with the business plan or operating plan.

(3) *Management.* (i) The organizing group shall include in the business plan or operating plan information sufficient to permit the OCC to evaluate the overall management ability of the organizing group. If the organizing group has limited banking experience or community involvement, the senior executive officers must be able to compensate for such deficiencies.

(ii) The organizing group may not hire an officer or elect or appoint a director if the OCC objects to that person at any time prior to the date the institution commences business.

(4) *Capital.* A proposed bank or Federal savings association must have sufficient initial capital, net of any organizational expenses that will be charged to the institution's capital after it begins operations, to support the institution's projected volume and type of business.

(5) *Community service.* (i) The business plan or operating plan must indicate the organizing group's knowledge of and plans for serving the community. The organizing group shall evaluate the banking needs of the community, including its consumer, business, nonprofit, and government sectors. The business plan or operating plan must demonstrate how the proposed national bank or Federal savings association responds to those needs consistent with the safe and sound operation of the institution. The provisions of this paragraph may not apply to an application to organize an institution for a special purpose.

(ii) As part of its business plan or operating plan, the organizing group shall submit a statement that demonstrates its plans to achieve CRA objectives.

(iii) Because community support is important to the long-term success of a national bank or Federal savings association, the organizing group shall include plans for attracting and maintaining community support.

(6) *Safety and soundness.* The business plan or operating plan must demonstrate that the organizing group (and the sponsoring company, if any), is aware of, and understands, applicable depository institution laws and regulations, and safe and sound banking operations and practices. The OCC will deny an application that does not meet these safety and soundness requirements.

(7) *Fiduciary powers.* The business plan or operating plan must indicate if the proposed institution intends to exercise fiduciary powers. The information required by § 5.26 shall be filed with the charter application. A separate application is not required.

(i) *Procedures*—(1) *Prefiling meeting.* The OCC normally requires a prefiling meeting with the organizers of a proposed national bank or Federal savings association before the organizers file an application. Organizers should be familiar with the OCC's chartering policy and procedural requirements in the Comptroller's Licensing Manual before the prefiling meeting. The prefiling meeting normally is held in the district office where the application will be filed but may be held at another location at the request of the applicant.

(2) *Business plan or operating plan.* An organizing group shall file a business plan or operating plan that addresses the subjects discussed in paragraph (h) of this section.

(3) *Contact person.* The organizing group shall designate a contact person to represent the organizing group in all contacts with the OCC. The contact person shall be an organizer and proposed director of the new national bank or Federal savings association, except a representative of the sponsor or sponsors may serve as contact person if an application is sponsored by an existing holding company, individuals currently affiliated with other depository institutions, or individuals who, in the OCC's view, are otherwise collectively experienced in banking and

have demonstrated the ability to work together effectively.

(4) *Decision notification.* The OCC notifies the spokesperson and other interested persons in writing of its decision on an application.

(5) *Activities.* (i) Before the OCC grants final approval, a proposed national bank or Federal savings association must be established as a legal entity. A national bank becomes a legal entity after it has filed its organization certificate and articles of association with the OCC as required by law. A Federal savings association becomes a legal entity after it has filed its proposed charter and bylaws with the OCC. A proposed national bank may offer and sell securities prior to OCC preliminary approval of the proposed national bank's charter application, provided that the proposed national bank has filed articles of association, an organization certificate, and a completed charter application and the bank complies with paragraph (i)(5)(iii) of this section. A proposed Federal stock savings association may offer and sell securities prior to OCC preliminary approval of the proposed Federal stock savings association's charter application, provided that the proposed Federal stock savings association has filed a proposed charter, bylaws, and a completed charter application and the Federal stock savings association complies with paragraph (i)(5)(iii) of this section.

(ii)(A) After the OCC grants preliminary approval, the organizing group shall elect a board of directors, take steps necessary to organize the proposed national bank or Federal savings association and prepare it for commencing business.

(B) A proposed national bank may not conduct the business of banking until the OCC grants final approval and issues a charter. A proposed Federal savings association may not commence business until the OCC grants final approval and issues a charter, which shall be in the form provided in this part.

(iii) For all capital obtained through a public offering a proposed national bank or Federal savings association shall use an offering circular that complies with the OCC's securities offering regulations, 12 CFR part 16 or part 197, as applicable. All securities of a particular class in the initial offering shall be sold at the same price.

(iv) A national bank or Federal savings association in organization shall raise its capital before it commences business. Preliminary approval expires if the proposed national bank or Federal savings association does not raise the required capital within 12 months from the date the OCC grants preliminary approval. Preliminary approval expires if the proposed national bank or Federal savings association does not commence business within 18 months from the date of preliminary approval, unless the OCC grants an extension. If preliminary approval expires, all cash collected on subscriptions shall be returned.

(j) *Expedited review.* An application to establish a full-service national bank or Federal savings association that is sponsored by a bank holding company or savings and loan holding company whose lead depository institution is an eligible bank or eligible savings association is deemed preliminarily approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC:

(1) Notifies the applicant prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2); or

(2) Notifies the applicant prior to that date that the OCC has determined that the proposed bank will offer banking services that are materially different than those offered by the lead depository institution.

(k) *National bankers' banks*—(1) *Activities and customers.* In addition to the other requirements of this section, when an organizing group seeks to organize a national bankers' bank, the organizing group shall list in the application the anticipated activities and customers or clients of the proposed national bankers' bank.

(2) *Waiver of requirements.* At the organizing group's request, the OCC may waive requirements that are applicable to national banks in general if those requirements are inappropriate for a national bankers' bank and would impede its ability to provide desired services to its market. An applicant must submit a request for a waiver with the application and must support the request with adequate justification and legal analysis. A national bankers' bank that is already in operation may also request a waiver. The OCC cannot waive statutory provisions that specifically apply to national bankers' banks pursuant to 12 U.S.C. 27(b)(1).

(3) *Investments.* A national bank or Federal savings association may invest up to 10 percent of its capital and surplus in a bankers' bank and may own five percent or less of any class of a bankers' bank's voting securities.

(l) *Special purpose institutions.* An applicant for a national bank or Federal savings association charter that will limit its activities to fiduciary activities, credit card operations, or another special purpose shall adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. An applicant for a national bank or Federal savings association charter that will have a community development focus shall also adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. A national bank that seeks to invest in a bank or savings association with a community development focus must comply with applicable requirements of 12 CFR part 24. A Federal savings association that seeks to invest in a bank or savings association with a community development focus must comply with § 160.36 or any other applicable requirements.

■ 8. Section 5.21 is added to read as follows:

§ 5.21 Federal Mutual Savings Association Charter and Bylaws.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, and 2901 *et seq.*

(b) *Licensing requirements.* A Federal mutual savings association must file an application, notice, or other filing as prescribed by this section when adopting or amending its charter or bylaws.

(c) *Scope.* This section describes the procedures and requirements governing charters and bylaws for Federal mutual savings associations.

(d) *Exceptions to rules of general applicability.* Notwithstanding any other provision of this part, §§ 5.8 through 5.11 shall not apply to this section.

(e) *Charter form.* Except as provided in paragraphs (f) and (g) of this section, a Federal mutual savings association shall have a charter in the following form. A charter for a Federal mutual savings bank shall substitute the term ''savings bank'' for ''association.'' The term ''trustee'' may be substituted for the term ''director.'' Associations adopting this charter with existing borrower members must grandfather those borrower members who were members as of the date of issuance of the new charter by the OCC. Such borrowers shall have one vote for the period of time such borrowings are in existence.

Federal Mutual Charter

Section 1. Corporate title. The full corporate title of the Federal savings association is ___.

Section 2. Office. The home office shall be located in ___ [city, state].

Section 3. Duration. The duration of the association is perpetual.

Section 4. Purpose and powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal mutual savings association chartered under section 5 of the Home Owners' Loan Act and to exercise all the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of the Comptroller of the Currency (''OCC'').

Section 5. Capital. The association may raise capital by accepting payments on savings and demand accounts and by any other means authorized by the OCC.

Section 6. Members. All holders of the association's savings, demand, or other authorized accounts are members of the association. In the consideration of all questions requiring action by the members of the association, each holder of an account shall be permitted to cast one vote for each $100, or fraction thereof, of the withdrawal value of the member's account. No member, however, shall cast more than 1,000 votes. All accounts shall be nonassessable.

Section 7. Directors. The association shall be under the direction of a board of directors. The authorized number of directors shall not be fewer than five nor more than fifteen persons, as fixed in the association's bylaws, except that the number of directors may be decreased to a number less than five or increased to a number greater than fifteen with the prior approval of the OCC.

Section 8. Capital, surplus, and distribution of earnings. The association shall maintain for the purpose of meeting losses the amount of capital required by section 5 of the Home Owners' Loan Act and by regulations of the OCC. The association shall distribute net earnings on its accounts on such basis and in accordance with such terms and conditions as may from time to time be authorized by the OCC: *Provided,* That the association may establish minimum-balance requirements for accounts to be eligible for distribution of earnings. All holders of accounts of the association shall be entitled to equal distribution of assets, *pro rata* to the value of their accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association. Moreover, in any such event, or in any other situation in which the priority of such accounts is in controversy, all such accounts shall, to the extent of their withdrawal value, be debts of the association having the same priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

Section 9. Amendment of charter. Adoption of any preapproved charter amendment shall be effective after such preapproved amendment has been approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be approved by the OCC prior to approval by the members at a legal meeting, and shall be effective upon filing with the OCC in accordance with regulatory procedures.

Attest: _____
Secretary of the Association

By: _____
President or Chief Executive Officer of the Association

Attest: _____
Deputy Comptroller for Licensing

By: _____
Comptroller of the Currency

Effective Date: _____

(f) *Charter amendments.* In order to adopt a charter amendment, a Federal mutual savings association must comply with the following requirements:

(1) *Board of directors approval.* The board of directors of the association must adopt a resolution proposing the charter amendment that states the text of such amendment;

(2) *Form of filing*—(i) *Application requirement.* If the proposed charter amendment would: Render more difficult or discourage a merger, proxy contest, the assumption of control by a mutual account holder of the association, or the removal of incumbent management; or involve a significant issue of law or policy; then, the association shall file the proposed amendment and obtain the prior approval of the OCC.

(ii) *Notice requirement.* If the proposed charter amendment does not involve a provision that would be covered by paragraph (f)(2)(i) of this section and is permissible under all applicable laws, rules and regulations, then the association shall submit the proposed amendment to the appropriate OCC licensing office, at least 30 days prior to the effective date of the proposed charter amendment.

(g) *Approval.* Any charter amendment filed pursuant to paragraph (f)(2)(ii) of this section shall automatically be approved 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter in adopting such amendment. This automatic approval does not apply if, prior to the expiration of such 30-day period, the OCC notifies the association that such amendment is rejected or that such amendment is deemed to be filed under the provisions of paragraph (f)(2)(i) of this section. In addition, notwithstanding anything in paragraph (f) of this section to the contrary, the following charter amendments, including the adoption of the Federal mutual charter as set forth in paragraph (e) of this section, shall be effective and deemed approved at the time of adoption, if adopted without change and filed with the OCC, within 30 days after adoption, provided the association follows the requirements of its charter in adopting such amendments:

(1) *Purpose and powers.* Add a second paragraph to section 4, as follows:

Section 4. Purpose and powers. * * * The association shall have the express power: (i) To act as fiscal agent of the United States when designated for that purpose by the Secretary of the Treasury, under such regulations as the Secretary may prescribe, to perform all such reasonable duties as fiscal agent of the United States as may be required, and to act as agent for any other instrumentality of the United States when designated for that purpose by any such instrumentality; (ii) To sue and be sued, complain and defend in any court of law or equity; (iii) To have a corporate seal, affixed by imprint, facsimile or otherwise; (iv) To appoint officers and agents as its business shall require and allow them suitable compensation; (v) To adopt bylaws not inconsistent with the Constitution or laws of the United States and rules and regulations adopted thereunder and under this Charter; (vi) To raise capital, which shall be unlimited, by accepting payments on savings, demand, or other accounts, as are authorized by rules and regulations made by the OCC, and the holders of all such accounts or other accounts as shall, to such extent as may be provided by such rules and regulations, be members of the association and shall have such voting rights and such other rights as are thereby provided; (vii) To issue notes, bonds, debentures, or other obligations, or securities, provided by or under any provision of Federal statute as from time to time is in effect; (viii) To provide for redemption of insured accounts; (ix) To borrow money without limitation and pledge and otherwise encumber any of its assets to secure its debts; (x) To lend and otherwise invest its funds as authorized by statute and the rules and regulations of the OCC; (xi) To wind up

and dissolve, merge, consolidate, convert, or reorganize; (xii) To purchase, hold, and convey real estate and personalty consistent with its objects, purposes, and powers; (xiii) To mortgage or lease any real estate and personalty and take such property by gift, devise, or bequest; and (xiv) To exercise all powers conferred by law. In addition to the foregoing powers expressly enumerated, this association shall have power to do all things reasonably incident to the accomplishment of its express objects and the performance of its express powers.

(2) *Title change.* A Federal mutual savings association that has complied with § 5.42 may amend its charter by substituting a new corporate title in section 1.

(3) *Home office.* A Federal mutual savings association may amend its charter by substituting a new home office in section 2, if it has complied with applicable requirements of § 5.40.

(4) *Maximum number of votes.* A Federal mutual savings association may amend its charter by substituting any number of votes per member between 1 and 1000 in section 6.

(h) *Reissuance of charter.* A Federal mutual savings association that has amended its charter may apply to have its charter, including the amendments, reissued by the OCC. Such request for reissuance should be filed at the appropriate OCC licensing office and contain signatures required under paragraph (e) of this section, together with such supporting documents as may be needed to demonstrate that the amendments were properly adopted.

(i) *Availability of chartering documents.* A Federal mutual savings association shall cause a true copy of its charter and bylaws and all amendments thereto to be available to accountholders at all times in each office of the savings association, and shall upon request deliver to any accountholders a copy of such charter and bylaws or amendments thereto.

(j) *Bylaws for Federal mutual savings associations*—(1) *In general.* A Federal mutual savings association shall operate under bylaws that contain provisions that comply with all requirements specified by the OCC in this paragraph and that are not otherwise inconsistent with the provisions of this paragraph, the association's charter, and all other applicable laws, rules, and regulations *provided that,* a bylaw provision inconsistent with the provisions of this paragraph may be adopted with the approval of the OCC. Bylaws may be adopted, amended or repealed by a majority of the votes cast by the members at a legal meeting or a majority of the association's board of directors. The bylaws for a Federal mutual savings bank shall substitute the term ''savings bank'' for ''association''. The term ''trustee'' may be substituted for the term ''director''.

(2) *Requirements.* The following requirements are applicable to Federal mutual savings associations:

(i) *Annual meetings of members.* (A) An association shall provide for and conduct an annual meeting of its members for the election of directors and at which any other business of the association may be conducted. Such meeting shall be held at any convenient place the board of directors may designate, and at a date and time within 150 days after the end of the association's fiscal year.

(B) At each annual meeting, the officers shall make a full report of the financial condition of the association and of its progress for the preceding year and shall outline a program for the succeeding year.

(ii) *Special meetings of members.* Procedures for calling any special meeting of the members and for conducting such a meeting shall be set forth in the bylaws. The board of directors of the association or the holders of 10 percent or more of the voting capital shall be entitled to call a special meeting. For purposes of this paragraph, ''voting capital'' means FDIC-insured deposits as of the voting record date.

(iii) *Notice of meeting of members.* Notice specifying the date, time, and place of the annual or any special meeting and adequately describing any business to be conducted shall be published for two successive weeks immediately prior to the week in which such meeting shall convene in a newspaper of general circulation in the city or county in which the principal place of business of the association is located, or mailed postage prepaid at least 15 days and not more than 45 days prior to the date on which such meeting shall convene to each of its members of record. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such meeting shall convene. The bylaws may permit a member to waive in writing any right to receive personal delivery of the notice. When any meeting is adjourned for 30 days or more, notice of the adjournment and reconvening of the meeting shall be given as in the case of the original meeting.

(iv) *Fixing of record date.* The bylaws shall provide for the fixing of a record date and a method for determining from the books of the association the members entitled to vote. Such date shall be not more than 60 days nor fewer than 10 days prior to the date on which the action, requiring such determination of members, is to be taken. The same determination shall apply to any adjourned meeting.

(v) *Member quorum.* Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question, unless otherwise required by regulation. At any adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally called. Members present at a duly constituted meeting may continue to transact business until adjournment.

(vi) *Voting by proxy.* Procedures shall be established for voting at any annual or special meeting of the members by proxy pursuant to the rules and regulations of the OCC. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the member. All proxies with a term greater than eleven months or solicited at the expense of the association must run to the board of directors as a whole, or to a committee appointed by a majority of such board.

(vii) *Communications between members.* Provisions relating to communications between members shall be consistent with § 144.8 of this chapter. No member, however, shall have the right to inspect or copy any portion of any books or records of a Federal mutual savings association containing:

(A) A list of depositors in or borrowers from such association;

(B) Their addresses;

(C) Individual deposit or loan balances or records; or

(D) Any data from which such information could be reasonably constructed.

(viii) *Number of directors, membership.* The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the OCC. Each director of the association shall be a member of the association. Directors may be elected for periods of one to three years and until their successors are elected and qualified, but if a staggered board is chosen, provision shall be made for the election of approximately one-third or one-half of

the board each year, as appropriate. State-chartered savings banks converting to Federal savings banks may include alternative provisions for the election and term of office of directors so long as such provisions are authorized by the OCC, and provide for compliance with the standard provisions of this paragraph no later than six years after the conversion to a Federal savings association.

(ix) *Meetings of the board.* The board of directors shall determine the place, frequency, time, procedure for notice, which shall be at least 24 hours unless waived by the directors, and waiver of notice for all regular and special meetings. The board also may permit telephonic or electronic participation at meetings. The bylaws may provide for action to be taken without a meeting if unanimous written consent is obtained for such action. A majority of the authorized directors shall constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board.

(x) *Officers, employees and agents.* (A) The bylaws shall contain provisions regarding the officers of the association, their functions, duties, and powers. The officers of the association shall consist of a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected annually by the board of directors. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed in the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary.

(B) Any officer may be removed by the board of directors with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. Termination for cause, for purposes of this § 5.21 and § 5.22, shall include termination because of the person's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, willful violation of any law, rule, or regulation (other than traffic violations or similar offenses) or final cease and desist order, or material breach of any provision of an employment contract.

(xi) *Vacancies, resignation or removal of directors.* In the event of a vacancy on the board, the board of directors may, by their affirmative vote, fill such vacancy, even if the remaining directors constitute less than a quorum. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the members. The bylaws shall set out the procedure for the resignation of a director. Directors may be removed only for cause, as defined in § 5.21(j)(2)(x)(B), by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

(xii) *Powers of the board.* The board of directors shall have the power to exercise any and all of the powers of the association not expressly reserved by the charter to the members.

(xiii) *Nominations for directors.* The bylaws shall provide that nominations for directors may be made at the annual meeting by any member and shall be voted upon, except, however, the bylaws may require that nominations by a member must be submitted to the secretary and then prominently posted in the principal place of business, at least 10 days prior to the date of the annual meeting. However, if such provision is made for prior submission of nominations by a member, then the bylaws must provide for a nominating committee, which, except in the case of a nominee substituted as a result of death or other incapacity, must submit nominations to the secretary and have such nominations similarly posted at least 15 days prior to the date of the annual meeting.

(xiv) *New business.* The bylaws shall provide procedures for the introduction of new business at the annual meeting.

(xv) *Amendment.* Bylaws may include any provision for their amendment that would be consistent with applicable law, rules, and regulations and adequately addresses its subject and purpose.

(A) Amendments shall be effective:

(*1*) After approval by a majority vote of the authorized board, or by a majority of the vote cast by the members of the association at a legal meeting; and

(*2*) After receipt of any applicable regulatory approval.

(B) When an association fails to meet its quorum requirement, solely due to vacancies on the board, the bylaws may be amended by an affirmative vote of a majority of the sitting board.

(xvi) *Miscellaneous.* The bylaws may also address any other subjects necessary or appropriate for effective operation of the association.

(3) *Form of filing*—(i) *Application requirement.* (A) Any bylaw amendment shall be submitted to the appropriate OCC licensing office for OCC approval if it would render more difficult or discourage a merger, proxy contest, the assumption of control by a mutual account holder of the association, or the removal of incumbent management; involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability; or be inconsistent with the requirements of this paragraph or with applicable laws, rules, regulations, or the association's charter.

(B) For purposes of paragraph (j)(2) of this section, bylaw provisions that adopt the language of the OCC's model or optional bylaws, if adopted without change, and filed with the OCC within 30 days after adoption, are effective upon adoption.

(ii) *Filing requirement.* If the proposed bylaw amendment does not involve a provision that would be covered by paragraph (j)(2)(i)(A) of this section, then the association shall submit the amendment to the appropriate OCC licensing office at least 30 days prior to the date the bylaw amendment is to be adopted by the association.

(iii) *Corporate governance procedures.* A Federal mutual association may elect to follow the corporate governance procedures of the laws of the state where the main office of the institution is located, provided that such procedures may be elected only to the extent not inconsistent with applicable Federal statutes, regulations, and safety and soundness, and such procedures are not of the type described in paragraph (j)(2)(i)(A) of this section. If this election is selected, a Federal mutual association shall designate in its bylaws the provision or provisions from the body of law selected for its corporate governance procedures, and shall file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption. The submission shall indicate, where not obvious, why the bylaw provisions meet the requirements stated in paragraph (j)(2)(i)(A) of this section.

(4) *Effectiveness.* Any bylaw amendment filed pursuant to paragraph (j)(2)(ii) of this section shall automatically be effective 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter and bylaws in adopting such amendment. This automatic effective date does not apply if, prior to the expiration of such 30-day period, the OCC notifies the association that such amendment is rejected or that such amendment requires an application to be filed pursuant to paragraph (j)(2)(i) of this section.

(5) *Effect of subsequent charter or bylaw change.* Notwithstanding any subsequent change to its charter or

bylaws, the authority of a Federal mutual savings association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect.

■ 9. Section 5.22 is added to read as follows:

§ 5.22 Federal stock savings association charter and bylaws.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, and 2901 *et seq.*

(b) *Licensing requirements.* A Federal stock savings association must file an application, notice, or other filing as prescribed by this section when adopting or amending its charter or bylaws.

(c) *Scope.* This section describes the procedures and requirements governing charters and bylaws for Federal stock savings associations.

(d) *Exceptions to rules of general applicability.* Notwithstanding any other provision of this part, §§ 5.8 through 5.11 shall not apply to this section.

(e) *Charter form.* The charter of a Federal stock association shall be in the following form, except as provided in this section. An association that has converted from the mutual form pursuant to part 192 of this chapter shall include in its charter a section establishing a liquidation account as required by § 192.3(c)(13) of this chapter. A charter for a Federal stock savings bank shall substitute the term ''savings bank'' for ''association.'' Charters may also include any preapproved optional provision contained in this section.

Federal Stock Charter

Section 1. Corporate title. The full corporate title of the association is ____.

Section 2. Office. The home office shall be located in ____ [city, state].

Section 3. Duration. The duration of the association is perpetual.

Section 4. Purpose and powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal savings association chartered under section 5 of the Home Owners' Loan Act and to exercise all of the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of the Comptroller of the Currency (''OCC'').

Section 5. Capital stock. The total number of shares of all classes of the capital stock that the association has the authority to issue is ____, all of which shall be common stock of par [or if no par is specified then shares shall have a stated] value of ____ per share. The shares may be issued from time to time as authorized by the board of directors without the approval of its shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted to the association), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the association that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the association or in connection with the conversion of the association from the mutual to stock form of capitalization, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless the issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting. The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors, unless the charter provides that there shall be no such cumulative voting. Subject to any provision for a liquidation account, in the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the association, to receive the remaining assets of the association available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

Section 6. Preemptive rights. Holders of the capital stock of the association shall not be entitled to preemptive rights with respect to any shares of the association which may be issued.

Section 7. Directors. The association shall be under the direction of a board of directors. The authorized number of directors, as stated in the association's bylaws, shall not be fewer than five nor more than fifteen except when a greater or lesser number is approved by the OCC.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is proposed by the board of directors of the association, approved by the shareholders by a majority of the votes eligible to be cast at a legal meeting, unless a higher vote is otherwise required, and approved or preapproved by the OCC.

Attest: _____
Secretary of the Association

By: _____
President or Chief Executive Officer of the Association

Attest: _____
Deputy Comptroller for Licensing

By: _____
Comptroller of the Currency

Effective Date: _____

(f) *Charter amendments.* In order to adopt a charter amendment, a Federal stock savings association must comply with the following requirements:

(1) *Board of directors approval.* The board of directors of the association must adopt a resolution proposing the charter amendment that states the text of such amendment;

(2) *Form of filing*—(i) *Application requirement.* If the proposed charter amendment would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a block of the association's stock, the removal of incumbent management, or involve a significant issue of law or policy, the association shall file the proposed amendment and shall obtain the prior approval of the OCC; and

(ii) *Notice requirement.* If the proposed charter amendment does not

involve a provision that would be covered by paragraph (f)(2)(i) of this section and such amendment is permissible under all applicable laws, rules or regulations, then the association shall submit the proposed amendments to the appropriate OCC licensing office, at least 30 days prior to the date the proposed charter amendment is to be mailed for consideration by the association's shareholders.

(g) *Approval.* Any charter amendment filed pursuant to paragraph (f)(2)(ii) of this section shall automatically be approved 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter in adopting such amendment, unless prior to the expiration of such 30-day period the OCC notifies the association that such amendment is rejected or that such amendment is deemed to be filed under the provisions of paragraph (f)(2)(i) of this section. In addition, the following charter amendments, including the adoption of the Federal stock charter as set forth in paragraph (e) of this section, shall be approved at the time of adoption, if adopted without change and filed with the OCC within 30 days after adoption, provided the association follows the requirements of its charter in adopting such amendments:

(1) *Title change.* A Federal stock association that has complied with § 5.42 of this chapter may amend its charter by substituting a new corporate title in section 1.

(2) *Home office.* A Federal savings association may amend its charter by substituting a new home office in section 2, if it has complied with applicable requirements of § 5.40.

(3) *Number of shares of stock and par value.* A Federal stock association may amend Section 5 of its charter to change the number of authorized shares of stock, the number of shares within each class of stock, and the par or stated value of such shares.

(4) *Capital stock.* A Federal stock association may amend its charter by revising Section 5 to read as follows:

Section 5. Capital stock. The total number of shares of all classes of capital stock that the association has the authority to issue is ____, of which ____ shall be common stock of par [or if no par value is specified the stated] value of ____ per share and of which [list the number of each class of preferred and the par or if no par value is specified the stated value per share of each such class]. The shares may be issued from time to time as authorized by the board of directors without further approval of shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the association that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the association or in connection with the conversion of the association from the mutual to the stock form of capitalization, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless their issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

Nothing contained in this Section 5 (or in any supplementary sections hereto) shall entitle the holders of any class of a series of capital stock to vote as a separate class or series or to more than one vote per share, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting: *Provided,* That this restriction on voting separately by class or series shall not apply:

i. To any provision which would authorize the holders of preferred stock, voting as a class or series, to elect some members of the board of directors, less than a majority thereof, in the event of default in the payment of dividends on any class or series of preferred stock;

ii. To any provision that would require the holders of preferred stock, voting as a class or series, to approve the merger or consolidation of the association with another corporation or the sale, lease, or conveyance (other than by mortgage or pledge) of properties or business in exchange for securities of a corporation other than the association if the preferred stock is exchanged for securities of such other corporation: *Provided,* That no provision may require such approval for transactions undertaken with the assistance or pursuant to the direction of the OCC or the Federal Deposit Insurance Corporation;

iii. To any amendment which would adversely change the specific terms of any class or series of capital stock as set forth in this Section 5 (or in any supplementary sections hereto), including any amendment which would create or enlarge any class or series ranking prior thereto in rights and preferences. An amendment which increases the number of authorized shares of any class or series of capital stock, or substitutes the surviving association in a merger or consolidation for the association, shall not be considered to be such an adverse change.

A description of the different classes and series (if any) of the association's capital stock and a statement of the designations, and the relative rights, preferences, and limitations of the shares of each class of and series (if any) of capital stock are as follows:

A. *Common stock.* Except as provided in this Section 5 (or in any supplementary sections thereto) the holders of the common stock shall exclusively possess all voting power. Each holder of shares of the common stock shall be entitled to one vote for each share held by each holder, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting.

Whenever there shall have been paid, or declared and set aside for payment, to the holders of the outstanding shares of any class of stock having preference over the common stock as to the payment of dividends, the full amount of dividends and of sinking fund, retirement fund, or other retirement payments, if any, to which such holders are respectively entitled in preference to the common stock, then dividends may be paid on the common stock and on any class or series of stock entitled to participate therewith as to dividends out of any assets legally available for the payment of dividends.

In the event of any liquidation, dissolution, or winding up of the association, the holders of the common

stock (and the holders of any class or series of stock entitled to participate with the common stock in the distribution of assets) shall be entitled to receive, in cash or in kind, the assets of the association available for distribution remaining after: (i) Payment or provision for payment of the association's debts and liabilities; (ii) distributions or provision for distributions in settlement of its liquidation account; and (iii) distributions or provision for distributions to holders of any class or series of stock having preference over the common stock in the liquidation, dissolution, or winding up of the association. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

B. *Preferred stock.* The association may provide in supplementary sections to its charter for one or more classes of preferred stock, which shall be separately identified. The shares of any class may be divided into and issued in series, with each series separately designated so as to distinguish the shares thereof from the shares of all other series and classes. The terms of each series shall be set forth in a supplementary section to the charter. All shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

a. The distinctive serial designation and the number of shares constituting such series;

b. The dividend rate or the amount of dividends to be paid on the shares of such series, whether dividends shall be cumulative and, if so, from which date(s), the payment date(s) for dividends, and the participating or other special rights, if any, with respect to dividends;

c. The voting powers, full or limited, if any, of shares of such series;

d. Whether the shares of such series shall be redeemable and, if so, the price(s) at which, and the terms and conditions on which, such shares may be redeemed;

e. The amount(s) payable upon the shares of such series in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association;

f. Whether the shares of such series shall be entitled to the benefit of a sinking or retirement fund to be applied to the purchase or redemption of such shares, and if so entitled, the amount of such fund and the manner of its application, including the price(s) at which such shares may be redeemed or purchased through the application of such fund;

g. Whether the shares of such series shall be convertible into, or exchangeable for, shares of any other class or classes of stock of the association and, if so, the conversion price(s) or the rate(s) of exchange, and the adjustments thereof, if any, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange.

h. The price or other consideration for which the shares of such series shall be issued; and

i. Whether the shares of such series which are redeemed or converted shall have the status of authorized but unissued shares of serial preferred stock and whether such shares may be reissued as shares of the same or any other series of serial preferred stock.

Each share of each series of serial preferred stock shall have the same relative rights as and be identical in all respects with all the other shares of the same series.

The board of directors shall have authority to divide, by the adoption of supplementary charter sections, any authorized class of preferred stock into series, and, within the limitations set forth in this section and the remainder of this charter, fix and determine the relative rights and preferences of the shares of any series so established.

Prior to the issuance of any preferred shares of a series established by a supplementary charter section adopted by the board of directors, the association shall file with the OCC a dated copy of that supplementary section of this charter established and designating the series and fixing and determining the relative rights and preferences thereof.

(5) *Limitations on subsequent issuances.* A Federal stock association may amend its charter to require shareholder approval of the issuance or reservation of common stock or securities convertible into common stock under circumstances which would require shareholder approval under the rules of the New York Stock Exchange if the shares were then listed on the New York Stock Exchange.

(6) *Cumulative voting.* A Federal stock association may amend its charter by substituting the following sentence for the second sentence in the third paragraph of Section 5: ''Each holder of shares of common stock shall be entitled to one vote for each share held by such holder and there shall be no right to cumulate votes in an election of directors.''

(7) *Anti-takeover provisions following mutual to stock conversion.* Notwithstanding the law of the state in which the association is located, a Federal stock association may amend its charter by renumbering existing sections as appropriate and adding a new section 8 as follows:

Section 8. Certain Provisions Applicable for Five Years. Notwithstanding anything contained in the Association's charter or bylaws to the contrary, for a period of [specify number of years up to five] years from the date of completion of the conversion of the Association from mutual to stock form, the following provisions shall apply:

A. *Beneficial Ownership Limitation.* No person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of the association. This limitation shall not apply to a transaction in which the association forms a holding company without change in the respective beneficial ownership interests of its stockholders other than pursuant to the exercise of any dissenter and appraisal rights, the purchase of shares by underwriters in connection with a public offering, or the purchase of less than 25 percent of a class of stock by a tax-qualified employee stock benefit plan as defined in § 192.25 of the OCC's regulations.

In the event shares are acquired in violation of this section 8, all shares beneficially owned by any person in excess of 10 percent shall be considered ''excess shares'' and shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for a vote.

For purposes of this section 8, the following definitions apply:

1. The term ''person'' includes an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization or similar company, a syndicate or any other group formed for the purpose of acquiring, holding or disposing of the equity securities of the association.

2. The term ''offer'' includes every offer to buy or otherwise acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value.

3. The term ''acquire'' includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

4. The term ''acting in concert'' means (a) knowing participation in a joint activity or conscious parallel action

towards a common goal whether or not pursuant to an express agreement, or (b) a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangements, whether written or otherwise.

B. *Cumulative Voting Limitation.* Stockholders shall not be permitted to cumulate their votes for election of directors.

C. *Call for Special Meetings.* Special meetings of stockholders relating to changes in control of the association or amendments to its charter shall be called only upon direction of the board of directors.

(h) *Anti-takeover provisions.* The OCC may grant approval to a charter amendment not listed in paragraph (g) of this section regarding the acquisition by any person or persons of its equity securities provided that the association shall file as part of its application for approval an opinion, acceptable to the OCC, of counsel independent from the association that the proposed charter provision would be permitted to be adopted by a corporation chartered by the state in which the principal office of the association is located. Any such provision must be consistent with applicable statutes, regulations, and OCC policies. Further, any such provision that would have the effect of rendering more difficult a change in control of the association and would require for any corporate action (other than the removal of directors) the affirmative vote of a larger percentage of shareholders than is required by this part, shall not be effective unless adopted by a percentage of shareholder vote at least equal to the highest percentage that would be required to take any action under such provision.

(i) *Reissuance of charter.* A Federal stock association that has amended its charter may apply to have its charter, including the amendments, reissued by the OCC. Such requests for reissuance should be filed with the appropriate OCC licensing office, and contain signatures required under (c) of this part, together with such supporting documents as needed to demonstrate that the amendments were properly adopted.

(j) *Bylaws for Federal stock savings associations*—(1) *In general.* Bylaws may be adopted, amended or repealed by either a majority of the votes cast by the shareholders at a legal meeting or a majority of the board of directors. A bylaw provision inconsistent with paragraph (k), (l), (m) or (n) of this section may be adopted only with the approval of the OCC.

(2) *Form of filing*—(i) *Application requirement.* (A) Any bylaw amendment shall be submitted to the OCC for approval if it would:

(*1*) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; or

(*2*) Be inconsistent with paragraphs (k) through (n) of this section, with applicable laws, rules, regulations or the association's charter or involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability.

(B) Bylaw provisions that adopt the language of the OCC's model or optional bylaws, if adopted without change, and filed with the OCC within 30 days after adoption, are effective upon adoption.

(ii) *Filing requirement.* If the proposed bylaw amendment does not involve a provision that would be covered by paragraph (j)(2)(i) or (iii) of this section and is permissible under all applicable laws, rules, or regulations, then the association shall submit the amendment to the OCC at least 30 days prior to the date the bylaw amendment is to be adopted by the association.

(iii) *Corporate governance procedures.* A Federal stock association may elect to follow the corporate governance procedures of: The laws of the state where the main office of the association is located; the laws of the state where the association's holding company, if any, is incorporated or chartered; Delaware General Corporation law; or The Model Business Corporation Act, provided that such procedures may be elected to the extent not inconsistent with applicable Federal statutes and regulations and safety and soundness, and such procedures are not of the type described in paragraph (j)(2)(i) of this section. If this election is selected, a Federal stock association shall designate in its bylaws the provision or provisions from the body or bodies of law selected for its corporate governance procedures, and shall file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption. The submission shall indicate, where not obvious, why the bylaw provisions meet the requirements stated in paragraph (j)(2)(i) of this section.

(3) *Effectiveness.* Any bylaw amendment filed pursuant to paragraph (j)(2)(ii) of this section shall automatically be effective 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter and bylaws in adopting such amendment, unless prior to the expiration of such 30-day period the OCC notifies the association that such amendment is rejected or that such amendment requires an application to be filed pursuant to paragraph (j)(2)(i) of this section.

(4) *Effect of subsequent charter or bylaw change.* Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal savings association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect.

(k) *Shareholders of Federal stock savings associations*—(1) *Shareholder meetings.* A meeting of the shareholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 150 days after the end of the association's fiscal year. Unless otherwise provided in the association's charter, special meetings of the shareholders may be called by the board of directors or on the request of the holders of 10 percent or more of the shares entitled to vote at the meeting, or by such other persons as may be specified in the bylaws of the association. All annual and special meetings of shareholders shall be held at any convenient place the board of directors may designate.

(2) *Notice of shareholder meetings.* Written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, the secretary, or the directors, or other persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address appearing on the stock transfer books or records of the association as of the record date prescribed in paragraph (i)(3) of this section, with postage thereon prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Notwithstanding anything in this section, however, a Federal stock association that is wholly owned shall not be subject to the shareholder notice requirement.

(3) *Fixing of record date.* For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

(4) *Voting lists.* (i) At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for the shares of the association shall make a complete list of the stockholders of record entitled to vote at such meeting, or any adjournments thereof, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the association and shall be subject to inspection by any shareholder of record or the stockholder's agent during the entire time of the meeting. The original stock transfer book shall constitute *prima facie* evidence of the stockholders entitled to examine such list or transfer books or to vote at any meeting of stockholders. Notwithstanding anything in this section, however, a Federal stock association that is wholly owned shall not be subject to the voting list requirements.

(ii) In lieu of making the shareholders list available for inspection by any shareholders as provided in paragraph (j)(4)(i) of this section, the board of directors may perform such acts as required by paragraphs (a) and (b) of Rule 14a–7 of the General Rules and Regulations under the Securities and Exchange Act of 1934 (17 CFR 240.14a–7) as may be duly requested in writing, with respect to any matter which may be properly considered at a meeting of shareholders, by any shareholder who is entitled to vote on such matter and who shall defray the reasonable expenses to be incurred by the association in performance of the act or acts required.

(5) *Shareholder quorum.* A majority of the outstanding shares of the association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the vote of a greater number of stockholders voting together or voting by classes is required by law or the charter. Directors, however, are elected by a plurality of the votes cast at an election of directors.

(6) *Shareholder voting*—(i) *Proxies.* Unless otherwise provided in the association's charter, at all meetings of shareholders, a shareholder may vote in person or by proxy executed in writing by the shareholder or by a duly authorized attorney in fact. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the shareholder. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

(ii) *Shares controlled by association.* Neither treasury shares of its own stock held by the association nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the association, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting.

(7) *Nominations and new business submitted by shareholders.* Nominations for directors and new business submitted by shareholders shall be voted upon at the annual meeting if such nominations or new business are submitted in writing and delivered to the secretary of the association at least five days prior to the date of the annual meeting. Ballots bearing the names of all the persons nominated shall be provided for use at the annual meeting.

(8) *Informal action by stockholders.* If the bylaws of the association so provide, any action required to be taken at a meeting of the stockholders, or any other action that may be taken at a meeting of the stockholders, may be taken without a meeting if consent in writing has been given by all the stockholders entitled to vote with respect to the subject matter.

(l) *Board of directors*—(1) *General powers and duties.* The business and affairs of the association shall be under the direction of its board of directors. Directors need not be stockholders unless the bylaws so require.

(2) *Number and term.* The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the OTS, prior to July 21, 2011 or the OCC. Directors shall be elected for a term of one to three years and until their successors are elected and qualified. If a staggered board is chosen, the directors shall be divided into two or three classes as nearly equal in number as possible and one class shall be elected by ballot annually.

(3) *Regular meetings.* The board of directors shall determine the place, frequency, time and procedure for notice of regular meetings.

(4) *Quorum.* A majority of the number of directors shall constitute a quorum for the transaction of business at any meeting of the board of directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the OCC.

(5) *Vacancies.* Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

(6) *Removal or resignation of directors.* (i) At a meeting of shareholders called expressly for that purpose, any director may be removed only for cause, as termination for cause is defined in § 5.21(j)(2)(x)(B), by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. Associations may provide for procedures regarding resignations in the bylaws.

(ii) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part.

(iii) Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

(7) *Executive and other committees.* The board of directors, by resolution adopted by a majority of the full board, may designate from among its members an executive committee and one or more other committees. No committee shall have the authority of the board of directors with reference to: The declaration of dividends; the amendment of the charter or bylaws of the association; recommending to the stockholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all, or substantially all, of the property and assets of the association otherwise than in the usual and regular course of its business; a voluntary dissolution of the association; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest. The designation of any committee and the delegation of authority thereto shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

(8) *Notice of special meetings.* Written notice of at least 24 hours regarding any special meeting of the board of directors or of any committee designated thereby shall be given to each director in accordance with the bylaws, although such notice may be waived by the director. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting need be specified in the notice or waiver of notice of such meeting. The bylaws may provide for electronic participation at a meeting.

(9) *Action without a meeting.* Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by all of the directors.

(10) *Presumption of assent.* A director of the association who is present at a meeting of the board of directors at which action on any association matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless a written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the association within five days after the date on which a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

(11) *Age limitation on directors.* A Federal association may provide a bylaw on age limitation for directors. Bylaws on age limitations must comply with all Federal laws, rules and regulations.

(m) *Officers*—(1) *Positions.* The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The offices of the secretary and treasurer or comptroller may be held by the same person and the vice president may also be either the secretary or the treasurer or comptroller. The board of directors may designate one or more vice presidents as executive vice president or senior vice president.

(2) *Removal.* Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby; but such removal, other than for cause, as termination for cause is defined in § 5.21(j)(2)(x)(B), shall be without prejudice to the contractual rights, if any, of the person so removed. Employment contracts shall conform with 12 CFR 163.39.

(3) *Age limitation on officers.* A Federal association may provide a bylaw on age limitation for officers. Bylaws on age limitations must comply with all Federal laws, rules, and regulations.

(n) *Certificates for shares and their transfer*—(1) *Certificates for shares.* Certificates representing shares of capital stock of the association shall be in such form as shall be determined by the board of directors and approved by the OCC. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the association. All certificates surrendered to the association for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in the case of a lost or destroyed certificate a new certificate may be issued upon such terms and indemnity to the association as the board of directors may prescribe.

(2) *Transfer of shares.* Transfer of shares of capital stock of the association shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by a legal representative, who shall furnish proper evidence of such authority, or by an attorney authorized by a duly executed power of attorney and filed with the association. The transfer shall be made only on surrender for cancellation of the certificate for the shares. The person in whose name shares of capital stock stand on the books of the association shall be deemed by the association to be the owner for all purposes.

■ 10. Section 5.23 is added to read as follows:

§ 5.23 Conversion to become a Federal savings association.

(a) *Authority.* 12 U.S.C. 35, 1462a, 1463, 1464, 1467a, 2903, and 5412(b)(2)(B).

(b) *Scope.* (1) This section describes procedures and standards governing OCC review and approval of an application by a mutual depository institution to convert to a Federal mutual savings association or an application by a stock depository institution to convert to a Federal stock savings association.

(2) As used in this section, depository institution means any commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank or a credit union, chartered in the United States and having its principal office located in the United States.

(c) *Licensing requirements.* A depository institution that is mutual in form (''mutual depository institution'') shall submit an application and obtain prior OCC approval to convert to a Federal mutual savings association. A stock depository institution shall submit an application and obtain prior OCC approval to convert to a Federal stock savings association. At the time of conversion, the applicant must have deposits insured by the Federal Deposit Insurance Corporation (FDIC). An institution that is not already insured by the FDIC must apply to the FDIC, and obtain FDIC approval, for deposit insurance before converting.

(d) *Conversion of a mutual depository institution or a stock depository institution to a Federal savings association*—(1) *Policy.* Consistent with the OCC's chartering policy, it is OCC policy to allow conversion to a Federal savings association charter by another financial institution that can operate safely and soundly as a Federal savings association in compliance with applicable laws, regulations, and policies. This includes consideration of the factors set out in section 5(e) of the Home Owners' Loan Act, 12 U.S.C. 1464(e). The converting financial institution must obtain all necessary regulatory and shareholder or member approvals. The OCC may deny an application by any mutual depository institution or stock depository institution to convert to a Federal mutual savings association charter or Federal stock association charter, respectively, on the basis of the standards for denial set forth in § 5.13(b) or when conversion would permit the applicant to escape supervisory action by its current regulators.

(2) *Procedures*—(i) *Prefiling communications.* The applicant should consult with the appropriate OCC licensing office prior to filing if it anticipates that its application will raise unusual or complex issues. If a prefiling meeting is appropriate, it will normally be held in the OCC licensing office where the application will be filed, but may be held at another location at the request of the applicant.

(ii) *Application.* A mutual depository institution or a stock depository institution shall submit its application to convert to a Federal mutual savings association or Federal stock depository association, respectively, to the appropriate OCC licensing office and shall send a copy of the application to its current appropriate Federal banking agency. The application must:

(A) Be signed by the president or other duly authorized officer;

(B) Identify each branch that the resulting financial institution expects to operate after conversion;

(C) Include the institution's most recent audited financial statements (if any);

(D) Include the latest report of condition and report of income (the most recent daily statement of condition will suffice if the institution does not file these reports);

(E) Unless otherwise advised by the OCC in a prefiling communication, include an opinion of counsel that, in the case of state-chartered institutions, the conversion is not in contravention of applicable state law, or in the case of Federally-chartered institutions, the conversion is not in contravention of applicable Federal law;

(F) State whether the institution wishes to exercise fiduciary powers after the conversion;

(G) Identify all subsidiaries, service corporation investments, bank service company investments, and other equity investments that will be retained following the conversion, and provide the information and analysis of the subsidiaries' activities and the service corporation investments and other equity investments that would be required if the converting mutual institution or stock institution were a Federal mutual savings association or Federal stock savings association, respectively, establishing each subsidiary or making each service corporation or other equity investment pursuant to §§ 5.35, 5.36, 5.38, or 5.59, or other applicable law and regulation;

(H) Identify any nonconforming assets (including nonconforming subsidiaries) and nonconforming activities that the institution engages in, and describe the plans to retain or divest those assets and activities;

(I) Include a business plan if the converting institution has been operating for less than three years, plans to make significant changes to its business after the conversion, or at the request of the OCC;

(J) Include a list of all outstanding conditions or other requirements imposed by the institution's current appropriate Federal banking agency and, if applicable, current state bank supervisor or state attorney-general in any cease and desist order, written agreement, other formal enforcement order, memorandum of understanding, approval of any application, notice or request, commitment letter, board resolution, or in any other manner, including the converting institution's analysis whether any such actions prohibit conversion under 12 U.S.C. 35, and the converting institution's plans regarding adhering to such conditions and requirements after conversion; and

(K) If the converting institution does not meet the qualified thrift lender test of 12 U.S.C. 1467a(m), include a plan to achieve compliance within a reasonable period of time and a request for an exception from the OCC.

(iii) The OCC may permit a Federal savings association to retain nonconforming assets of a converting institution for the time period prescribed by the OCC following a conversion, subject to conditions and an OCC determination of the carrying value of the retained assets consistent with the requirements of section 5(c) of the HOLA relating to loans and investments. The OCC may permit a Federal savings association to continue nonconforming activities of a converting institution for the time period prescribed by the OCC following a conversion, subject to conditions.

(iv) Approval for an institution to convert to a Federal savings association expires if the conversion has not occurred within six months of the OCC's approval of the application, unless the OCC grants an extension of time.

(v) When the OCC determines that the applicant has satisfied all statutory and regulatory requirements and any other conditions, the OCC issues a charter. The charter provides that the institution is authorized to begin conducting business as a Federal mutual savings association or a Federal stock savings association as of a specified date.

(3) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(4) *Expedited review.* An application by an eligible national bank to convert to a Federal savings association charter is deemed approved by the OCC as of the 60th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(e) *Conversion of a mutual depository institution to a Federal mutual savings association—supplemental rules.* In addition to the rules and procedures set forth in paragraph (d) of this section, an applicant converting from a mutual depository institution to a Federal mutual savings association shall comply with the following: After a Federal charter is issued to a converting institution, the association's members shall after due notice, or upon a valid adjournment of a previous legal meeting, hold a meeting to elect directors and take care of all other actions necessary to fully effectuate the conversion and operate the association in accordance with law and these rules and regulations. Immediately thereafter, the board of directors shall meet, elect officers, and transact any other appropriate business.

(f) *Conversion of a national bank to a Federal stock savings association—supplemental rules*—(1) *Additional procedures.* A national bank may convert to a Federal stock savings association. In addition to the rules and procedures set forth in paragraph (d) of this section, a national bank that desires

to convert to a Federal stock savings association shall follow the requirements and procedures set forth in 12 U.S.C. 214a as if it were converting to a state bank and include in its application information demonstrating compliance with the applicable requirements of 12 U.S.C. 214a.

(2) *Termination and change of status.* The appropriate OCC licensing office provides instructions to the converting national bank for terminating its status as a national bank and beginning its status as a Federal savings association.

(g) *Continuation of business and entity.* The existence of the converting institution shall continue in the resulting Federal savings association. The resulting Federal savings association shall be considered the same business and entity as the converting institution, although as to rights, powers, and duties, the resulting Federal savings association is a Federal savings association. Any and all of the assets and other property (whether real, personal, mixed, tangible or intangible, including choses in action, rights, and credits) of the converting institution become assets and property of the resulting Federal savings association when the conversion occurs. Similarly, any and all of the obligations and debts of and claims against the converting institution become obligations and debts of and claims against the Federal savings association when the conversion occurs.

■ 11. Section 5.24 is revised to read as follows:

§ 5.24. Conversion to become a national bank.

(a) *Authority.* 12 U.S.C. 35, 93a, 214a, 214b, 214c, and 2903.

(b) *Licensing requirements.* A state bank, a stock state savings association, or a Federal stock savings association shall submit an application and obtain prior OCC approval to convert to a national bank charter. A Federal mutual savings association that plans to convert to a national bank must first convert to a Federal stock savings association under 12 CFR part 192.

(c) *Scope.* (1) This section describes procedures and standards governing OCC review and approval of an application by a state bank, a stock state savings association, or a Federal stock savings association to convert to a national bank charter.

(2) As used in this section, *state bank* includes a state bank as defined in 12 U.S.C. 214(a).

(d) *Policy.* Consistent with the OCC's chartering policy, it is OCC policy to allow conversion to a national bank charter by another financial institution that can operate safely and soundly as a national bank in compliance with applicable laws, regulations, and policies. A converting financial institution also must obtain all necessary regulatory and shareholder approvals. The OCC may deny an application by any state bank, stock state savings association, and any Federal stock savings association to convert to a national bank charter on the basis of the standards for denial set forth in § 5.13(b), or when conversion would permit the applicant to escape supervisory action by its current regulators.

(e) *Procedures*—(1) *Prefiling communications.* The applicant should consult with the appropriate OCC licensing office prior to filing if it anticipates that its application will raise unusual or complex issues. If a prefiling meeting is appropriate, it will normally be held at the OCC licensing office where the application will be filed, but may be held at another location at the request of the applicant.

(2) *Application.* A state bank, a stock state savings association, or a Federal stock savings association shall submit its application to convert to a national bank to the appropriate OCC licensing office and send a copy to its current appropriate Federal banking agency. The application must:

(i) Be signed by the president or other duly authorized officer;

(ii) Identify each branch that the resulting bank expects to operate after conversion;

(iii) Include the institution's most recent audited financial statements (if any);

(iv) Include the latest report of condition and report of income (the most recent daily statement of condition will suffice if the institution does not file these reports);

(v) Unless otherwise advised by the OCC in a prefiling communication, include an opinion of counsel that, in the case of a state bank, the conversion is not in contravention of applicable state law, or in the case of a Federal stock savings association, the conversion is not in contravention of applicable Federal law;

(vi) State whether the institution wishes to exercise fiduciary powers after the conversion;

(vii) Identify all subsidiaries, bank service company investments, and other equity investments that will be retained following the conversion, and provide the information and analysis of the subsidiaries' activities, the bank service company investments, and the other equity investments that would be required if the converting bank or savings association were a national bank establishing each subsidiary or making each bank service company investment or other equity investment pursuant to §§ 5.34, 5.35, 5.36, 5.39, 12 CFR part 1, or other applicable law and regulation;

(viii) Identify any nonconforming assets (including nonconforming subsidiaries) and nonconforming activities that the institution engages in and describe the plans to retain or divest those assets and activities;

(ix) Include a business plan if the converting institution has been operating for fewer than three years, plans to make significant changes to its business after the conversion, or at the request of the OCC; and

(x) List all outstanding conditions or other requirements imposed by the institution's current appropriate Federal banking agency and, if applicable, current state bank supervisor or state attorney-general in any cease and desist order, written agreement, other formal enforcement order, memorandum of understanding, approval of any application, notice or request, commitment letter, board resolution, or in any other manner, including the converting institution's analysis whether the conversion is prohibited under 12 U.S.C. 35, and state the institution's plans regarding adhering to such conditions or requirements after conversion.

(3) The OCC may permit a national bank to retain nonconforming assets of a state bank or stock state savings association, subject to conditions and an OCC determination of the carrying value of the retained assets, pursuant to 12 U.S.C. 35. The OCC may permit a national bank to continue nonconforming activities of a state bank or stock state savings association, or to retain the nonconforming assets or nonconforming activities of a Federal stock savings association, for a reasonable period of time following a conversion, subject to conditions imposed by the OCC.

(4) Approval for an institution to convert to a national bank expires if the conversion has not occurred within six months of the OCC's approval of the application, unless the OCC grants an extension of time.

(5) When the OCC determines that the applicant has satisfied all statutory and regulatory requirements, including those set forth in 12 U.S.C. 35, and any other conditions, the OCC issues a charter certificate. The certificate provides that the institution is authorized to begin conducting business as a national bank as of a specified date.

(f) *Conversion of a Federal stock savings association to a national bank—supplemental rules*—(1) *Additional information.* A Federal stock savings association may convert to a national bank. In addition to the rules and procedures set forth in paragraph (e) of this section, a Federal stock savings association that desires to convert to a national bank shall include in its application information demonstrating compliance with applicable laws regarding the permissibility, requirements, and procedures for conversions, including any applicable stockholder or account holder approval requirements.

(2) *Termination and change of status.* The appropriate OCC licensing office provides instructions to the converting Federal stock savings association for terminating its status as a Federal stock savings association and beginning its status as a national bank.

(g) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all of §§ 5.8, 5.10, and 5.11 apply.

(h) *Expedited review.* An application by an eligible savings association to convert to a national bank charter is deemed approved by the OCC as of the 60th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(i) *Continuation of business and corporate entity.* The corporate existence of the converting institution shall continue in the resulting national bank. The resulting national bank shall be considered the same business and corporate entity as the converting institution, although as to rights, powers, and duties, the resulting national bank is a national bank. Any and all of the assets and other property (whether real, personal, mixed, tangible or intangible, including choses in action, rights, and credits) of the converting institution become assets and property of the resulting national bank when the conversion occurs. Similarly, any and all of the obligations and debts of and claims against the converting institution become obligations and debts of and claims against the national bank when the conversion occurs.

■ 12. Section 5.25 is added to read as follows:

§ 5.25 Conversion from a national bank or Federal savings association to a state bank or state savings association.

(a) *Authority.* 12 U.S.C. 93a, 214a, 214b, 214c, 214d, 1462a, 1463, 1464, and 5412(b)(2)(B).

(b) *Licensing requirement.* A national bank shall give notice to the OCC before converting to a state bank (including a state bank as defined in 12 U.S.C. 214(a)) or a state savings association. A Federal savings association shall give notice to the OCC before converting to a state savings association or a state bank. A Federal mutual savings association that plans to convert to a stock state bank must first convert to a Federal stock savings association under 12 CFR part 192.

(c) *Scope.* This section describes the procedures for a national bank seeking to convert to a state bank or a state savings association or for a Federal savings association seeking to convert to a state savings association or a state bank.

(d) *Procedures*—(1) *National banks.* A national bank may convert to a state bank (including a state bank as defined in 214(a)) or a state savings association in accordance with 12 U.S.C. 214a and 214c, without prior OCC approval, subject to compliance with 12 U.S.C. 214d. Termination of a national bank's status as a national bank occurs upon the bank's completion of the requirements of 12 U.S.C. 214a, and upon the OCC's receipt of the bank's national bank charter in connection with the consummation of the conversion.

(2) *Federal savings associations.* A Federal savings association may convert to a state savings association or to a state bank, without prior OCC approval, subject to compliance with 12 U.S.C. 1464(i)(6). Termination of a Federal savings association's status as a Federal savings association occurs upon receipt of the Federal savings association's charter in connection with the consummation of the conversion.

(3) *Notice of intent.* (i) A national bank that desires to convert to a state bank (including a state bank as defined in 214(a)) or state savings association, or a Federal savings association that desires to convert to a state savings association or a state bank, shall submit a notice of intent to convert to the appropriate OCC licensing office. The national bank or Federal savings association shall file this notice with the OCC at the time it files a conversion application with the appropriate state authority or the prospective appropriate Federal banking agency. The national bank or Federal savings association also shall transmit a copy of the conversion application to the prospective appropriate Federal banking agency if it has not already done so.

(ii) The notice shall include:

(A) A copy of the conversion application; and

(B) An analysis demonstrating that the conversion is in compliance with laws of the applicable jurisdictions regarding the permissibility, requirements, and procedures for conversions, including any applicable stockholder or account holder approval requirements.

(4) *Consultation.* The OCC may consult with the appropriate state authorities or the prospective appropriate Federal banking agency regarding the proposed conversion.

(5) *Termination of status.* After receipt of the notice, the appropriate OCC licensing office provides instructions to the national bank or Federal savings association for terminating its status as a national bank or Federal savings association.

(e) *Exceptions to rules of general applicability.* Sections 5.5 through 5.8 and 5.10 through 5.13 do not apply to this section.

■ 13. Section 5.26 is revised to read as follows:

§ 5.26 Fiduciary powers of national banks and Federal savings associations.

(a) *Authority.* 12 U.S.C. 92a and 1462a, 1463, 1464(n), and 5412(b)(2)(B).

(b) *Licensing requirements.* A national bank or Federal savings association must submit an application and obtain prior approval from, or in certain circumstances file a notice with, the OCC in order to exercise fiduciary powers. No approval or notice is required in the following circumstances:

(1) Where two or more national banks consolidate or merge, and any of the national banks has, prior to the consolidation or merger, received OCC approval to exercise fiduciary powers and that approval is in force at the time of the consolidation or merger, the resulting national bank may exercise fiduciary powers in the same manner and to the same extent as the national bank to which approval was originally granted;

(2) Where two or more Federal savings associations consolidate or merge, and any of the Federal savings associations has, prior to the consolidation or merger, received approval from the OCC or the Office of Thrift Supervision to exercise fiduciary powers and that approval is in force at the time of the consolidation or merger, the resulting Federal savings association may exercise fiduciary powers in the same manner and to the same extent as

the Federal savings association to which approval was originally granted;

(3) Where a national bank with prior OCC approval to exercise fiduciary powers is the resulting bank in a merger or consolidation with a state bank, state savings association, or Federal savings association and the national bank will exercise fiduciary powers in the same manner and to the same extent to which approval was originally granted; and

(4) Where a Federal savings association with prior approval from the OCC or the Office of Thrift Supervision to exercise fiduciary powers is the resulting savings association in a merger or consolidation with a state bank, state savings association, or national bank and the Federal savings association will exercise fiduciary powers in the same manner and to the same extent to which approval was originally granted.

(c) *Scope.* This section sets forth the procedures governing OCC review and approval of an application, and in certain cases the filing of a notice, by a national bank or Federal savings association to exercise fiduciary powers. Fiduciary activities of national banks are subject to the provisions of 12 CFR part 9. Fiduciary activities of Federal savings associations are subject to the provisions of 12 CFR part 150.

(d) *Policy.* The exercise of fiduciary powers is primarily a management decision of the national bank or Federal savings association. The OCC generally permits a national bank or Federal savings association to exercise fiduciary powers if the bank or savings association is operating in a satisfactory manner, the proposed activities comply with applicable statutes and regulations, and the bank or savings association retains qualified fiduciary management.

(e) *Procedure*—(1) *In general.* The following institutions must obtain approval from the OCC in order to exercise fiduciary powers:

(i) A national bank or Federal savings association without fiduciary powers:

(ii) A national bank without fiduciary powers that desires to exercise fiduciary powers as the resulting bank after merging with a state bank, state savings association, or Federal savings association with fiduciary powers or a Federal savings association without fiduciary powers that desires to exercise fiduciary powers as the resulting savings association after merging with a state bank, state savings association or national bank with fiduciary powers;

(iii) A national bank that results from the conversion of a state bank or a state or Federal savings association that was exercising fiduciary powers prior to the conversion or a Federal savings association that results from a conversion of a state or national bank or a state savings association that was exercising fiduciary powers prior to the conversion; and

(iv) A national bank or Federal savings association that has received approval from the OCC to exercise limited fiduciary powers that desires to exercise full fiduciary powers.

(2) *Application.* (i) Except as provided in paragraph (e)(2)(ii) of this section, a national bank or Federal savings association that desires to exercise fiduciary powers shall submit to the OCC an application requesting approval. The application must contain:

(A) A statement requesting full or limited powers (specifying which powers);

(B) A statement that the capital and surplus of the national bank or Federal savings association is not less than the capital and surplus required by state law of state banks, trust companies, and other corporations exercising comparable fiduciary powers;

(C) Sufficient biographical information on proposed trust management personnel to enable the OCC to assess their qualifications;

(D) A description of the locations where the national bank or Federal savings association will conduct fiduciary activities;

(E) If requested by the OCC, an opinion of counsel that the proposed activities do not violate applicable Federal or state law, including citations to applicable law; and

(F) Any other information necessary to enable the OCC to sufficiently assess the factors described in paragraph (e)(2)(iii) of this section.

(ii) If approval to exercise fiduciary powers is desired in connection with any other transaction subject to an application under this part, the applicant covered under paragraph (e)(1)(ii), (e)(1)(iii), or (e)(1)(iv) of this section may include a request for approval of fiduciary powers, including the information required by paragraph (e)(2)(i) of this section, as part of its other application. The OCC does not require a separate application requesting approval to exercise fiduciary powers under these circumstances.

(iii) When reviewing any application filed under this section, the OCC considers factors such as the following:

(A) The financial condition of the national bank or Federal savings association;

(B) The adequacy of the national bank's or Federal savings association's capital and surplus and whether it is sufficient under the circumstances and not less than the capital and surplus required by state law or state banks, trust companies, and other corporations exercising comparable fiduciary powers;

(C) The character and ability of proposed trust management, including qualifications, experience, and competency. The OCC must approve any trust management change the bank or savings association makes prior to commencing trust activities;

(D) The adequacy of the proposed business plan, if applicable;

(E) The needs of the community to be served; and

(F) Any other factors or circumstances that the OCC considers proper.

(3) *Expedited review.* An application by an eligible national bank or eligible Federal savings association to exercise fiduciary powers is deemed approved by the OCC as of the 30th day after the application is received by the OCC, unless the OCC notifies the bank or savings association prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(4) *Permit.* Approval of an application under this section constitutes a permit under 12 U.S.C. 92a for national banks and 12 U.S.C. 1464(n) for Federal savings associations to conduct the fiduciary powers requested in the application.

(5) *Notice required.* A national bank or Federal savings association that has ceased to conduct previously approved fiduciary powers for 18 consecutive months must provide the OCC with a notice describing the nature and manner of the activities proposed to be conducted and containing the information required by paragraph (e)(2)(i) of this section 60 days prior to commencing any fiduciary activity.

(6) *Notice of fiduciary activities in additional states.* (i) No further application under this section is required when a national bank or Federal savings association with existing OCC approval to exercise fiduciary powers plans to engage in any of the activities specified in § 9.7(d) of this chapter or to conduct activities ancillary to its fiduciary business, in a state in addition to the state described in the application for fiduciary powers that the OCC has approved.

(ii) Unless the national bank or Federal savings association provides notice through other means (such as a merger application), the national bank or Federal savings association shall provide written notice to the OCC no later than 10 days after it begins to engage in any of the activities specified in § 9.7(d) of this chapter in a state in addition to the state described in the application for fiduciary powers that the OCC has approved. The written notice must identify the new state or states

involved, identify the fiduciary activities to be conducted, and describe the extent to which the activities differ materially from the fiduciary activities the national bank or Federal savings association previously conducted.

(iii) No notice is required if the national bank or Federal savings association is conducting only activities ancillary to its fiduciary business through a trust representative office or otherwise.

(7) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(8) *Expiration of approval.* Approval expires if a national bank or Federal savings association does not commence fiduciary activities within 18 months from the date of approval, unless the OCC grants an extension of time.

■ 14. Section 5.30 is revised to read as follows:

§ 5.30 Establishment, acquisition, and relocation of a branch of a national bank.

(a) *Authority.* 12 U.S.C. 1–42 and 2901–2907.

(b) *Licensing requirements.* A national bank shall submit an application and obtain prior OCC approval in order to establish or relocate a branch.

(c) *Scope*—(1) *In general.* This section describes the procedures and standards governing OCC review and approval of an application by a national bank to establish a new branch or to relocate a branch.

(2) *Branch established through a conversion or business combination.* The standards of this section governing review and approval of applications by the OCC and, as applicable, 12 U.S.C. 36(b), but not the application procedures set forth in this section, apply to branches acquired or retained in a conversion approved under 12 CFR 5.24 or a business combination approved under § 5.33. A branch acquired or retained in a conversion or business combination is subject to the application procedures set forth in §§ 5.24 or 5.33.

(d) *Definitions*—(1) *Branch* includes any branch bank, branch office, branch agency, additional office, or any branch place of business established by a national bank in the United States or its territories at which deposits are received, checks paid, or money lent.

(i) A branch established by a national bank includes a mobile facility, temporary facility, intermittent facility, drop box or a seasonal agency as described in 12 U.S.C. 36(c).

(ii) A facility otherwise described in this paragraph (d)(1) is not a branch if:

(A) The bank establishing the facility does not permit members of the public to have physical access to the facility for purposes of making deposits, paying checks, or borrowing money (*e.g.,* an office established by the bank that receives deposits only through the mail); or

(B) It is located at the site of, or is an extension of, an approved main office or branch office of the national bank. The OCC determines whether a facility is an extension of an existing main office or branch office on a case-by-case basis. For this purpose, the OCC will consider a drive-in or pedestrian facility located within 500 feet of a public entrance to an existing main office or branch office to be an extension of the existing main office or branch office, provided the functions performed at the drive-in or pedestrian facility are limited to functions that are ordinarily performed at a teller window.

(iii) A branch does not include an automated teller machine (ATM), a remote service unit (such as an automated loan machine or personal computer used in providing financial services), a loan production office, a deposit production office, a trust office, an administrative office, a data processing office, or any other office that does not engage in any of the activities in paragraph (d)(1) of this section.

(2) *Home state* means the state in which the national bank's main office is located.

(3) *Intermittent branch* means a branch that is operated by a national bank for one or more limited periods of time to provide branch banking services at a specified recurring event, on the grounds or premises where the event is held or at a fixed site adjacent to the grounds or premises where the event is held, and exclusively during the occurrence of the event. Examples of an intermittent branch include the operation of a branch on the campus of, or at a fixed site adjacent to the campus of, a specific college during school registration periods; or the operation of a branch during a state fair on state fairgrounds or at a fixed site adjacent to the fairgrounds.

(4) *Messenger service* has the meaning set forth in 12 CFR 7.1012.

(5) *Mobile branch* is a branch of a national bank, other than a messenger service branch, that does not have a single, permanent site, and includes a vehicle that travels to various public locations to enable customers to conduct their banking business. A mobile branch may provide services at various regularly scheduled locations or it may be open at irregular times and locations such as at county fairs, sporting events, or school registration periods. A branch license is needed for each mobile unit.

(6) *Temporary branch* means a branch of a national bank that is located at a fixed site and which, from the time of its opening, is scheduled to, and will, permanently close no later than a certain date (not longer than one year after the branch is first opened) specified in the branch application and the public notice.

(e) *Policy.* In determining whether to approve an application to establish or relocate a branch, the OCC is guided by the following principles:

(1) Maintaining a safe and sound banking system;

(2) Encouraging a national bank to provide fair access to financial services by helping to meet the credit needs of its entire community;

(3) Ensuring compliance with laws and regulations; and

(4) Promoting fair treatment of customers including efficiency and better service.

(f) *Procedures*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, each national bank proposing to establish a branch shall submit to the appropriate OCC licensing office a separate application for each proposed branch.

(2) *Messenger services.* A national bank may request approval, through a single application, for multiple messenger services to serve the same general geographic area. (*See* 12 CFR 7.1012). Unless otherwise required by law, the bank need not list the specific locations to be served.

(3) *Jointly established branches.* If a national bank proposes to establish a branch jointly with one or more national banks or other depository institutions, only one of the national banks must submit a branch application. The national bank submitting the application may act as agent for all national banks in the group of depository institutions proposing to share the branch. The application must include the name and main office address of each national bank in the group.

(4) *Intermittent branches.* Prior to operating an intermittent branch, a national bank shall file a branch application and publish notice in accordance with § 5.8, both of which shall identify the event at which the branch will be operated; designate a location for operation of the branch

which shall be on the grounds or premises at which the event is held or on a fixed site adjacent to those grounds or premises; and specify the approximate time period during which the event will be held and during which the branch will operate, including whether operation of the branch will be on an annual or otherwise recurring basis. If the branch is approved, then the bank need not obtain approval each time it seeks to operate the branch in accordance with the original application and approval.

(5) *Authorization.* The OCC authorizes operation of the branch when all requirements and conditions for opening are satisfied.

(6) *Expedited review.* An application submitted by an eligible bank to establish or relocate a branch is deemed approved by the OCC as of the 15th day after the close of the applicable public comment period or the 45th day after the filing is received by the OCC (or in the case of a short-distance relocation the 30th day after the filing is received by the OCC), whichever is later, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An application to establish or relocate more than one branch is deemed approved by the OCC as of the 15th day after the close of the last public comment period.

(g) *Interstate branches.* A national bank that seeks to establish and operate a *de novo* branch in any state other than the bank's home state or a state in which the bank already has a branch shall satisfy the standards and requirements of 12 U.S.C. 36(g).

(h) *Exceptions to rules of general applicability.* (1) A national bank filing an application for a mobile branch or messenger service branch shall publish a public notice, as described in § 5.8, in the communities in which the bank proposes to engage in business.

(2) The comment period on an application to engage in a short-distance relocation is 15 days.

(3) The OCC may waive or reduce the public notice and comment period, as appropriate, with respect to an application to establish a branch to restore banking services to a community affected by a disaster or to temporarily replace banking facilities where, because of an emergency, the bank cannot provide services or must curtail banking services.

(4) The OCC may waive or reduce the public notice and comment period, as appropriate, for an application by a national bank with a CRA rating of Satisfactory or better to establish a temporary branch which, if it were established by a state bank to operate in the manner proposed, would be permissible under state law without state approval.

(i) *Expiration of approval.* Approval expires if a branch has not commenced business within 18 months after the date of approval unless the OCC grants an extension.

(j) *Branch closings.* A national bank shall comply with the requirements of 12 U.S.C. 1831r–1 with respect to procedures for branch closings.

■ 15. Section 5.31 is added to read as follows:

§ 5.31 Establishment, acquisition, and relocation of a branch and establishment of an agency office of a Federal savings association.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464. 2901–2907 and 5412(b)(2)(B).

(b) *Licensing requirements.* A Federal savings association shall submit an application and obtain prior OCC approval in order to establish or relocate a branch or to establish an agency office or conduct additional activities at an agency office, if required under this section.

(c) *Scope*—(1) *In general.* This section describes the procedures and standards governing OCC review and approval of an application by a Federal savings association to establish a new branch or to relocate a branch and the circumstances in which a Federal savings association may establish or relocate a branch without application to the OCC. It also describes the authority of a Federal savings association to establish an agency office.

(2) *Branch established through a conversion or business combination.* The standards of this section governing review and approval of applications by the OCC, but not the application procedures set forth in this section, apply to branches acquired or retained in a conversion approved under 12 CFR 5.23 or a business combination approved under 12 CFR 5.33. A branch acquired or retained in a conversion or business combination is subject to the application procedures set forth in §§ 5.23 or 5.33.

(3) *Branching by savings associations in the District of Columbia.* This section also implements section 5(m) of the HOLA, 12 U.S.C. 1464(m), addressing branching by savings associations in the District of Columbia.

(d) *Definitions.* (1) A *branch office* of a Federal savings association for purposes of this section is a branch office as defined in 12 CFR 145.92(a).

(2) *Home state* means the state in which the Federal savings association's home office is located.

(e) *Policy.* In determining whether to approve an application to establish or relocate a branch, the OCC is guided by the following principles:

(1) Maintaining a safe and sound banking system;

(2) Encouraging a Federal savings association to provide fair access to financial services by helping to meet the credit needs of its entire community;

(3) Ensuring compliance with laws and regulations; and

(4) Promoting fair treatment of customers including efficiency and better service.

(f) *Procedures*—(1) *Application requirements.* (i) Except as provided in paragraph (f)(2) of this section, each Federal savings association proposing to establish or relocate a branch shall submit to the appropriate OCC licensing office a separate application for each proposed branch.

(ii) *Authorization.* The OCC authorizes operation of the branch when all requirements and conditions for opening are satisfied.

(iii) *Expedited review.* If an application to establish or relocate a branch is required of an eligible Federal savings association, the application is deemed approved by the OCC as of the 15th day after the close of the applicable public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC notifies the savings association prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An application to establish or relocate more than one branch is deemed approved by the OCC as of the 15th day after the close of the last public comment period.

(2) *Exceptions.* Except as provided in paragraph (j) of this section, a Federal savings association is not required to submit an application and receive OCC approval under the following circumstances:

(i) *Drive-in or pedestrian offices.* A Federal savings association may establish a drive-in or pedestrian office that is located within 500 feet of a public entrance to its existing home or branch office, provided the functions performed at the office are limited to functions that are ordinarily performed at a teller window.

(ii) *Short-distance relocation.* A Federal savings association may change the permanent location of an existing branch office to a site that is within the market area and short-distance location area, as defined in § 5.3(l).

(iii) *Highly rated Federal savings associations.* A Federal savings association that is an eligible savings association as defined in § 5.3(g) may change the permanent location of, or establish a new, branch office if it meets all of the following requirements:

(A) It published a public notice under § 5.8 of its intent to change the location of the branch office or establish a new branch office. The public notice must be published at least 35 days before the proposed action establishment or relocation. If the notice is published more than 12 months before the proposed action, the publication is invalid.

(B) If the Federal savings association intends to change the location of an existing branch office, it must post a notice of its intent in a prominent location in the existing office to be relocated. This notice must be posted for 30 days from the date of publication of the initial public notice described in paragraph (f)(2)(iii)(A) of this section.

(C)(*1*) No person files a comment opposing the proposed action within 30 days after the date of the publication of the public notice; or

(*2*) A person files a comment opposing the proposed action and the OCC determines that the comment raises issues that are not relevant to the approval standards for an application for a branch or that OCC action in response to the comment is not required.

(3) *Notice of branch opening.* If a Federal savings association is not required to file an application to establish or relocate a branch pursuant to paragraph (f)(2)(iii) of this section, the Federal savings association shall file a notice with the OCC with the date the branch was established or relocated and the address of the branch within 10 days after the opening of the branch.

(g) *Exceptions to rules of general applicability.* (1) The OCC may waive or reduce the public notice and comment period, as appropriate, with respect to an application to establish a branch to restore banking services to a community affected by a disaster or to temporarily replace banking facilities where, because of an emergency, the savings association cannot provide services or must curtail banking services.

(2) The OCC may waive or reduce the public notice and comment period, as appropriate, for an application by a Federal savings association with a CRA rating of Satisfactory or better to establish a temporary branch which, if it were established by a state bank to operate in the manner proposed, would be permissible under state law without state approval.

(h) *Expiration of approval.* Approval expires if a branch has not commenced business within 18 months after the date of approval unless the OCC grants an extension.

(i) *Branch closings.* A Federal savings association shall comply with the applicable requirements of 12 U.S.C. 1831r–1 with respect to procedures for branch closings.

(j) *Section 5(m) of the HOLA.* (1) Under section 5(m)(1) of the HOLA (12 U.S.C. 1464(m)(1)), no savings association may establish or move any branch in the District of Columbia or move its principal office in the District of Columbia without the OCC's prior written approval.

(2) Any Federal savings association that must obtain approval of the OCC under 12 U.S.C. 1464(m)(1) shall follow the application procedures of this section. Any state savings association that must obtain approval of the OCC under 12 U.S.C. 1464(m)(1) shall follow the application procedures of this section as if it were a Federal savings association.

(k) *Agency offices*—(1) *In general.* A Federal savings association may establish or maintain an agency office to engage in one or more of the following activities:

(i) Servicing, originating, or approving loans and contracts;

(ii) Managing or selling real estate owned by the Federal savings association; and

(iii) Conducting fiduciary activities or activities ancillary to the association's fiduciary business in compliance with § 5.26(e).

(2) *Additional services*—(i) *In general.* A Federal savings association may request, and the OCC may approve, any service not listed in paragraph (k)(1) of this section, except for payment on savings accounts.

(ii) *Application required.* A Federal savings association desiring to engage in such additional services shall submit an application to the appropriate OCC licensing office.

(iii) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to filings under this paragraph (k)(2). However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(3) *Records.* A Federal savings association must maintain records of all business it transacts at an agency office. It must maintain these records at the agency office, and must transmit copies to a home or branch office.

■ 16. Section 5.32 is amended by:

■ a. Revising the section heading;

■ b. Adding paragraph (d)(4); and

■ c. Removing, in paragraph (h)(2), the phrase ''to the appropriate district office'' and adding in its place the phrase ''to the appropriate OCC licensing office''.

The revision and additions read as follows:

§ 5.32 Expedited procedures for certain reorganizations of a national bank.

* * * * *

(d) * * *

(4) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

* * * * *

■ 17. Section 5.33 is revised to read as follows:

§ 5.33 Business combinations involving a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 24(Seventh), 93a, 181, 214a, 214b, 215, 215a, 215a–1, 215a–3, 215b, 215c, 1462a, 1463, 1464, 1467a, 1828(c), 1831u, 2903, and 5412(b)(2)(B).

(b) *Scope.* This section sets forth the provisions governing business combinations and the standards for:

(1) OCC review and approval of an application by a national bank or a Federal savings association for a business combination resulting in a national bank or Federal savings association; and

(2) Requirements of notices and other procedures for national banks and Federal savings associations involved in other combinations in which a national bank or Federal savings association is not the resulting institution.

(c) *Licensing requirements.* As prescribed by this section, a national bank or Federal savings association shall submit an application and obtain prior OCC approval for a business combination when the resulting institution is a national bank or Federal savings association. As prescribed by this section, a national bank or Federal savings association shall give notice to the OCC prior to engaging in an other combination where the resulting institution will not be a national bank or Federal savings association.[1] A national bank shall submit an

[1] Other combination transactions do not require an application under this section. However, some may require an application under 12 CFR 5.53.

application and obtain prior OCC approval for any merger between the national bank and one or more of its nonbank affiliates.

(d) *Definitions.* For purposes of this section:

(1) *Bank* means any national bank or any state bank.

(2) *Business combination* means:

(i) Any merger or consolidation between a national bank or a Federal savings association and one or more depository institutions or state trust companies, in which the resulting institution is a national bank or Federal savings association;

(ii) In the case of a Federal savings association, any merger or consolidation with a credit union in which the resulting institution is a Federal savings association;

(iii) In the case of a national bank, any merger between a national bank and one or more of its nonbank affiliates;

(iv) The acquisition by a national bank or a Federal savings association of all, or substantially all, of the assets of another depository institution; or

(v) The assumption by a national bank or a Federal savings association of any deposit liabilities of another insured depository institution or any deposit accounts or other liabilities of a credit union or any other institution that will become deposits at the national bank or Federal savings association.

(3) *Business reorganization* means either:

(i) A business combination between eligible banks and eligible savings associations, or between an eligible bank or an eligible savings association and an eligible depository institution, that are controlled by the same holding company or that will be controlled by the same holding company prior to the combination; or

(ii) A business combination between an eligible bank or an eligible savings association and an interim national bank or interim Federal savings association chartered in a transaction in which a person or group of persons exchanges its shares of the eligible bank or eligible savings association for shares of a newly formed holding company and receives after the transaction substantially the same proportional share interest in the holding company as it held in the eligible bank or eligible savings association (except for changes in interests resulting from the exercise of dissenters' rights), and the reorganization involves no other transactions involving the bank or savings association.

(4) *Company* means a corporation, limited liability company, partnership, business trust, association, or similar organization.

(5) For business combinations under paragraphs (g)(4) and (5) of this section, a company or shareholder is deemed to *control* another company if:

(i) Such company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company, or

(ii) Such company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company. No company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity.

(6) *Credit union* means a financial institution subject to examination by the National Credit Union Administration Board.

(7) *Home state* means, with respect to a national bank, the state in which the main office of the national bank is located and, with respect to a state bank, the state by which the bank is chartered.

(8) *Interim national bank or interim Federal savings association* means a national bank or Federal savings association that does not operate independently but exists solely as a vehicle to accomplish a business combination.

(9) *Nonbank affiliate* of a national bank means any company (other than a bank or Federal savings association) that controls, is controlled by, or is under common control with the national bank.

(10) *Other combination* means:

(i) Any merger or consolidation between a national bank or a Federal savings association and one or more depository institutions or state trust companies, in which the resulting institution is not a national bank or Federal savings association;

(ii) In the case of a Federal stock savings association, any merger or consolidation with a credit union in which the resulting institution is a credit union;

(iii) The transfer by a national bank or a Federal savings association of any deposit liabilities to another insured depository institution, a credit union or any other institution; or

(iv) The acquisition by a national bank or a Federal savings association of all, or substantially all, of the assets, or the assumption of all or substantially all of the liabilities, of any company other than a depository institution.

(11) *Savings association* and *state savings association* have the meaning set forth in section 3(b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(1).

(12) *State trust company* means a trust company organized under state law that is not engaged in the business of receiving deposits, other than trust funds.

(e) *Policy*—(1) *Factors*—(i) *In general.* When the OCC evaluates any application for a business combination, the OCC considers the following factors:

(A) The capital level of any resulting national bank or Federal savings association

(B) The conformity of the transaction to applicable law, regulation, and supervisory policies;

(C) The purpose of the transaction;

(D) The impact of the transaction on safety and soundness of the national bank or Federal savings association; and

(E) The effect of the transaction on the national bank's or Federal savings association's shareholders (or members in the case of a mutual savings association), depositors, other creditors, and customers.

(ii) *Bank Merger Act.* When the OCC evaluates an application for a business combination under the Bank Merger Act, the OCC also considers the following factors:

(A) *Competition.* (*1*) The OCC considers the effect of a proposed business combination on competition. The applicant shall provide a competitive analysis of the transaction, including a definition of the relevant geographic market or markets. An applicant may refer to the Comptroller's Licensing Manual for procedures to expedite its competitive analysis.

(*2*) The OCC will deny an application for a business combination if the combination would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking in any part of the United States. The OCC also will deny any proposed business combination whose effect in any section of the United States may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the probable effects of the transaction in meeting the convenience and needs of the community clearly outweigh the anticompetitive effects of the transaction. For purposes of weighing against anticompetitive effects, a business combination may have favorable effects in meeting the convenience and needs of the community if the depository institution being acquired has limited long-term prospects, or if the resulting national bank or Federal savings association will provide significantly improved,

additional, or less costly services to the community.

(B) *Financial and managerial resources and future prospects.* The OCC considers the financial and managerial resources and future prospects of the existing or proposed institutions.

(C) *Convenience and needs of community.* The OCC considers the probable effects of the business combination on the convenience and needs of the community served. The applicant shall describe these effects in its application, including any planned office closings or reductions in services following the business combination and the likely impact on the community. The OCC also considers additional relevant factors, including the resulting national bank's or Federal savings association's ability and plans to provide expanded or less costly services to the community.

(D) *Money laundering.* The OCC considers the effectiveness of any insured depository institution involved in the business combination in combating money laundering activities, including in overseas branches.

(E) *Financial stability.* The OCC considers the risk to the stability of the United States banking and financial system.

(F) *Deposit concentration limit.* The OCC will not approve a transaction that would violate the deposit concentration limit in 12 U.S.C. 1828(c)(13) for certain interstate merger transactions.

(iii) *Community Reinvestment Act.* When the OCC evaluates an application for a business combination under the Community Reinvestment Act, the OCC also considers the performance of the applicant and the other depository institutions involved in the business combination in helping to meet the credit needs of the relevant communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices.

(2) *Acquisition and retention of branches.* An applicant shall disclose the location of any branch it will acquire and retain in a business combination, including approved but unopened branches. The OCC considers the acquisition and retention of a branch under the standards set out in § 5.30 or § 5.31, as applicable, but it does not require a separate application.

(3) *Subsidiaries.* (i) An applicant must identify any subsidiary, financial subsidiary investment, bank service company investment, service corporation investment, or other equity investment to be acquired in a business combination and state the activities of each subsidiary or other company in which the applicant would be acquiring an investment. The OCC does not require a separate application or notice under §§ 5.34, 5.35, 5.36, 5.38, 5.39, 5.58, and 5.59.

(ii) An national bank applicant proposing to acquire, through a business combination, a subsidiary, financial subsidiary investment, bank service company investment, service corporation investment, or other equity investment of any entity other than a national bank must provide the same information and analysis of the subsidiary's activities, or of the investment, that would be required if the applicant were establishing the subsidiary, or making such investment, pursuant to §§ 5.34, 5.35, 5.36, or 5.39.

(iii) A Federal savings association applicant proposing to acquire, through a business combination, a subsidiary, bank service company investment, service corporation investment, or other equity investment of any entity other than a Federal savings association must provide the same information and analysis of the subsidiary's activities, or of the investment, that would be required if the applicant were establishing the subsidiary, or making such investment, pursuant to §§ 5.35, 5.38, 5.58, or 5.59.

(4) *Interim national bank or interim Federal savings association.* (i) Application. An applicant for a business combination that plans to use an interim national bank or interim Federal savings association to accomplish the transaction shall file an application to organize an interim national bank or interim Federal savings association as part of the application for the related business combination.

(ii) *Conditional approval.* The OCC grants conditional preliminary approval to form an interim national bank or interim Federal savings association when it acknowledges receipt of the application for the related business combination.

(iii) *Corporate status.* An interim national bank or interim Federal savings association becomes a legal entity and may enter into legally valid agreements when it has filed, and the OCC has accepted, the interim national bank's duly executed articles of association and organization certificate or the Federal savings association's charter and bylaws. OCC acceptance occurs:

(A) On the date the OCC advises the interim national bank that its articles of association and organization certificate are acceptable or advises the interim Federal savings association that its charter and bylaws are acceptable; or

(B) On the date the interim national bank files articles of association and an organization certificate that conform to the form for those documents provided by the OCC in the Comptroller's Licensing Manual or the date the interim Federal savings association files a charter and bylaws that conform to the requirements set out in this part 5.

(iv) *Other corporate procedures.* An applicant should consult the Comptroller's Licensing Manual to determine what other information is necessary to complete the chartering of the interim national bank as a national bank or the interim Federal savings association as a Federal savings association.

(5) *Nonconforming assets.* (i) An applicant shall identify any nonconforming activities and assets, including nonconforming subsidiaries, of other institutions involved in the business combination that will not be disposed of or discontinued prior to consummation of the transaction. The OCC generally requires a national bank or Federal savings association to divest or conform nonconforming assets, or discontinue nonconforming activities, within a reasonable time following the business combination.

(ii) Any resulting Federal savings association shall conform to the requirements of sections 5(c) and 10(m) of the Home Owners' Loan Act (12 U.S.C. 1464(c) and 1467a(m)) within the time period prescribed by the OCC.

(6) *Fiduciary powers.* (i) An applicant shall state whether the resulting national bank or Federal savings association intends to exercise fiduciary powers pursuant to § 5.26(b).

(ii) If an applicant intends to exercise fiduciary powers after the combination and requires OCC approval for such powers, the applicant must include the information required under § 5.26(e)(2).

(7) *Expiration of approval.* Approval of a business combination, and conditional approval to form an interim national bank or interim Federal savings association, if applicable, expires if the business combination is not consummated within six months after the date of OCC approval, unless the OCC grants an extension of time.

(8) *Adequacy of disclosure.* (i) An applicant shall inform shareholders of all material aspects of a business combination and shall comply with any applicable requirements of the Federal securities laws and securities regulations of the OCC. Accordingly, an applicant shall ensure that all proxy and information statements prepared in connection with a business combination do not contain any untrue or misleading statement of a material fact, or omit to

state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(ii) A national bank or Federal savings association applicant with one or more classes of securities subject to the registration provisions of section 12(b) or (g) of the Securities Exchange Act of 1934, 15 U.S.C. 78 l (b) or 78 l (g), shall file preliminary proxy material or information statements for review with the Director, Securities and Corporate Practices Division, OCC, Washington, DC 20219. Any other applicant shall submit the proxy materials or information statements it uses in connection with the combination to the appropriate OCC licensing office no later than when the materials are sent to the shareholders.

(f) *Exceptions to rules of general applicability*—(1) *National bank or Federal savings association applicant*—(i) *In general.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10 and 5.11 apply.

(ii) *Statutory notice.* If an application is subject to the Bank Merger Act or to another statute that requires notice to the public, a national bank or Federal savings association applicant shall follow the public notice requirements contained in 12 U.S.C. 1828(c)(3) or the other statute and sections 5.8(b) through 5.8(e), 5.10, and 5.11.

(2) *Interim national bank or interim Federal savings association.* Sections 5.8, 5.10, and 5.11 do not apply to an application to organize an interim national bank or interim Federal savings association. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply. The OCC treats an application to organize an interim national bank or interim Federal savings association as part of the related application to engage in a business combination and does not require a separate public notice and public comment process.

(3) *State bank, or state savings association, state trust company, or credit union as resulting institution.* Sections 5.7 through 5.13 do not apply to transactions covered by paragraphs (g)(6) or (g)(7) of this section.

(g) *Provisions governing consolidations and mergers with different types of entities*—(1) *Consolidations and mergers under 12 U.S.C. 215 or 215a of a national bank with other national banks and state banks as defined in 12 U.S.C. 215b(1) resulting in a national bank.* (i) A national bank entering into a consolidation or merger authorized pursuant to 12 U.S.C. 215 or 215a, respectively, is subject to the approval procedures and requirements with respect to treatment of dissenting shareholders set forth in those provisions.

(ii) Any national bank that will not be the resulting bank in a consolidation or merger under 12 U.S.C. 215 or 215a shall provide a notice to the OCC under paragraph (k) of this section.

(2) *Consolidations and mergers of a national bank with Federal savings associations under 12 U.S.C. 215c resulting in a national bank.* (i) With the approval of the OCC, any national bank and any Federal savings association may consolidate or merge with a national bank as the resulting institution by complying with the following procedures:

(A) A national bank entering into the consolidation or merger shall follow the procedures of 12 U.S.C. 215 or 215a, respectively, as if the Federal savings association were a national bank.

(B)(*1*) A Federal savings association entering into the consolidation or merger shall comply with the requirements of paragraph (n) of this section and follow the procedures set out in paragraph (o) of this section and shall provide a notice to the OCC under paragraph (k) of this section.

(*2*) For purposes of this paragraph (g)(2), a combination in which a national bank acquires all or substantially all of the assets, or assumes all or substantially all of the liabilities, of a Federal savings association shall be treated as a consolidation for the Federal savings association.

(ii)(A) National bank shareholders who dissent from a plan to consolidate may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 215 as if the Federal savings association were a national bank.

(B) Federal savings association shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their Federal savings association shares if they comply with the requirements of 12 U.S.C. 215 or 215a as if the Federal savings association were a national bank.

(C) The OCC will conduct an appraisal or reappraisal of the value of the national bank or Federal savings association held by dissenting shareholders in accordance with the provisions of 12 U.S.C. 215 or 215a, as applicable, except that the costs and expenses of any appraisal or reappraisal may be apportioned and assessed by the Comptroller as he or she may deem equitable against all or some of the parties. In making this determination the Comptroller shall consider whether any party has acted arbitrarily or not in good faith in respect to the rights provided by this paragraph.

(iii) The consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any participating institution by the resulting institution.

(3) *Consolidation or merger of a Federal savings association with another Federal savings association, a national bank, a state bank, a state savings bank, a state savings association, a state trust company, or a credit union resulting in a Federal savings association.* (i) With the approval of the OCC, a Federal savings association may consolidate or merge with another Federal savings association, a national bank, a state bank, a state savings association, a state trust company, or a credit union with the Federal savings association as the resulting institution by complying with the following procedures:

(A)(*1*) The applicant Federal savings association shall comply with the requirements of paragraph (n) of this section and follow the procedures set out in paragraph (o) of this section.

(*2*) For purposes of this paragraph (g)(3), a combination in which a Federal savings association acquires all or substantially all of the assets, or assumes all or substantially all of the liabilities, of another other participating institution shall be treated as a consolidation for the acquiring Federal savings association and as a consolidation by a Federal savings association whose assets are acquired, if any.

(B)(*1*) A national bank entering into a merger or consolidation with a Federal savings association when the resulting institution will be a Federal savings association shall comply with the requirements of 12 U.S.C. 214a and 12 U.S.C. 214c as if the Federal savings association were a state bank. However, for these purposes the references in 12 U.S.C. 214c to ''law of the State in which such national banking association is located'' and ''any State authority'' mean ''laws and regulations governing Federal savings associations'' and ''Office of the Comptroller of the Currency'' respectively. The national bank also shall provide a notice to the OCC under paragraph (k) of this section.

(*2*) National bank shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a as if the Federal savings association were a state bank. The OCC will conduct an appraisal or reappraisal of the value of the national bank shares held by dissenting shareholders in accordance with the provisions of 12 U.S.C. 214a, except that the costs and expenses of any appraisal or reappraisal may be apportioned and assessed by the Comptroller as he or she may deem equitable against all or some of the parties. In making this determination the Comptroller shall consider whether any party has acted arbitrarily or not in good faith in respect to the rights provided by this paragraphs.

(C)(*1*) A Federal savings association entering into a merger or consolidation with another Federal savings association when the resulting institution will be the other Federal savings association shall comply with the requirements of paragraph (n) of this section and the procedures of paragraph (o) of this section and shall provide a notice to the OCC under paragraph (k) of this section.

(*2*) Federal savings association shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their Federal savings association shares if they comply with the requirements of 12 U.S.C. 214a as if the other Federal savings association were a state bank. The OCC will conduct an appraisal or reappraisal of the value of the Federal savings association shares held by dissenting shareholders in accordance with the provisions of 12 U.S.C. 214a, except that the costs and expenses of any appraisal or reappraisal may be apportioned and assessed by the Comptroller as he or she may deem equitable against all or some of the parties. In making this determination the Comptroller shall consider whether any party has acted arbitrarily or not in good faith in respect to the rights provided by this paragraph.

(*3*) The plan of merger or consolidation must provide the manner of disposing of the shares of the resulting Federal savings association not taken by the dissenting shareholders of the Federal savings association.

(D)(*1*) A state bank, state savings association, state trust company, or credit union entering into a consolidation or merger with a Federal savings association when the resulting institution will be a Federal savings association shall follow the procedures for such consolidations or mergers set out in the law of the state or other jurisdiction under which the state bank, state savings association, state trust company, or credit union is organized.

(*2*) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the state bank, state savings association, or state trust company, entering into the consolidation or merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the state bank, state savings association, or state trust company is organized.

(ii) The consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any participating institution by the resulting institution.

(4) *Mergers of a national bank with its nonbank affiliates under 12 U.S.C. 215a–3 resulting in a national bank.* (i) With the approval of the OCC, a national bank may merge with one or more of its nonbank affiliates, with the national bank as the resulting institution, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. If the national bank is an insured bank, the transaction is also subject to approval by the FDIC under the Bank Merger Act, 12 U.S.C. 1828(c).

(ii) A national bank entering into the merger shall follow the procedures of 12 U.S.C. 215a as if the nonbank affiliate were a state bank, except as otherwise provided herein.

(iii) A nonbank affiliate entering into the merger shall follow the procedures for such mergers set out in the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(iv) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank affiliate entering into the merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(v) The corporate existence of each institution participating in the merger shall be continued in the resulting national bank, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating institutions shall be transferred to the resulting national bank, as set forth in 12 U.S.C. 215a(a), (e), and (f) in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 215a(a), as if the nonbank affiliate were a state bank.

(5) *Mergers of an uninsured national bank with its nonbank affiliates under 12 U.S.C. 215a–3 resulting in a nonbank affiliate.* (i) With the approval of the OCC, a national bank that is not an insured bank as defined in 12 U.S.C. 1813(h) may merge with one or more of its nonbank affiliates, with the nonbank affiliate as the resulting entity, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers.

(ii) A national bank entering into the merger shall follow the procedures of 12 U.S.C. 214a, as if the nonbank affiliate were a state bank, except as otherwise provided in this section.

(iii) A nonbank affiliate entering into the merger shall follow the procedures for such mergers set out in the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(iv)(A) National bank shareholders who dissent from an approved plan to merge may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a as if the nonbank affiliate were a state bank. The OCC may conduct an appraisal or reappraisal of dissenters' shares of stock in a national bank involved in the merger if all parties agree that the determination is final and binding on each party and agree on how the total expenses of the OCC in making the appraisal will be divided among the parties and paid to the OCC.

(B) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank affiliate involved in the merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(v) The corporate existence of each entity participating in the merger shall be continued in the resulting nonbank affiliate, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating national bank shall be transferred to the resulting nonbank affiliate as set forth in 12 U.S.C. 214b, in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 214a, as if the nonbank affiliate were a state bank.

(6) *Consolidation or merger under 12 U.S.C. 214a of a national bank with a state bank resulting in a state bank as defined in 12 U.S.C. 214(a)*—(i) *Policy.* Prior OCC approval is not required for the merger or consolidation of a national

bank with a state bank as defined in 12 U.S.C. 214(a) Termination of a national bank's existence and status as a national banking association is automatic, and its charter cancelled, upon completion of the statutory and regulatory requirements for engaging in the consolidation or merger and consummation of the consolidation or merger.

(ii) *Procedures.* A national bank desiring to merge or consolidate with a state bank as defined in 12 U.S.C. 214(a) when the resulting institution will be a state bank shall comply with the requirements and follow the procedures of 12 U.S.C. 214a and 214c and shall provide notice to the OCC under paragraph (k) of this section.

(iii) *Dissenters' rights and appraisal procedures.* National bank shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a. The OCC conducts an appraisal or reappraisal of the value of the national bank shares held by dissenting shareholders as provided for in 12 U.S.C. 214a.

(iv) *Liquidation account.* The consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any participating institution by the resulting institution.

(7) *Consolidation or merger of a Federal savings association with a state bank, state savings bank, state savings association, state trust company, or credit union resulting in a state bank, state savings bank, state savings association, state trust company, or credit union*—(i) *Policy.* Prior OCC approval is not required for the merger or consolidation of a Federal savings association with a state bank, state savings bank, state savings association, state trust company, or credit union when the resulting institution will be a state institution or credit union. Termination of a national bank's or Federal savings association's existence and status as a national banking association or Federal savings association is automatic, and its charter cancelled, upon completion of the statutory and regulatory requirements for engaging in the consolidation or merger and consummation of the consolidation or merger.

(ii) *Procedures.* (A) A Federal savings association desiring to merge or consolidate with a state bank, state savings bank, state savings association, state trust company, or credit union when the resulting institution will be a state institution or credit union shall comply with the requirements of paragraph (n) of this section and the procedures of paragraph (o) of this section and shall provide notice to the OCC under paragraph (k) of this section.

(B) For purposes of this paragraph (g)(7), a combination in which a state bank, state savings bank, state savings association, state trust company, or credit union acquires all or substantially all of the assets, or assumes all or substantially all of the liabilities, of a Federal savings association shall be treated as a consolidation by the Federal savings association.

(iii) *Dissenters' rights and appraisal procedures.* (A) Federal savings association shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their Federal savings association shares if they comply with the requirements of 12 U.S.C. 214a as if the Federal savings association were a national bank. The OCC conducts an appraisal or reappraisal of the value of the Federal savings association shares held by dissenting shareholders only if all parties agree that the determination will be final and binding. The parties shall also agree on how the total expenses of the OCC in making the appraisal will be divided among the parties and paid to the OCC.

(B) The plan of merger or consolidation must provide the manner of disposing of the shares of the resulting state institution not taken by the dissenting shareholders of the Federal savings association.

(iv) *Liquidation account.* The consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any participating institution by the resulting institution.

(h) *Interstate combinations under 12 U.S.C. 1831u.* A business combination between insured banks with different home states under the authority of 12 U.S.C. 1831u must satisfy the standards and requirements and comply with the procedures of 12 U.S.C. 1831u and either 12 U.S.C. 215, 215a, and 215a–1, as applicable, if the resulting bank is a national bank, or 12 U.S.C. 214a, 214b, and 214c if the resulting bank is a state bank. For purposes of 12 U.S.C. 1831u, the acquisition of a branch without the acquisition of all or substantially all of the assets of a bank is treated as the acquisition of a bank whose home state is the state in which the branch is located.

(i) *Expedited review for business reorganizations and streamlined applications.* A filing that qualifies as a business reorganization as defined in paragraph (d)(3) of this section, or a filing that qualifies as a streamlined application as described in paragraph (j) of this section, is deemed approved by the OCC as of the 45th day after the application is received by the OCC, or the 15th day after the close of the comment period, whichever is later, unless the OCC notifies the applicant that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An application under this paragraph must contain all necessary information for the OCC to determine if it qualifies as a business reorganization or streamlined application.

(j) *Streamlined applications.* (1) An applicant may qualify for a streamlined business combination application in the following situations:

(i) At least one party to the transaction is an eligible bank or eligible Federal savings association, and all other parties to the transaction are eligible banks, eligible Federal savings associations, or eligible depository institutions, the resulting national bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the total assets of the target institution are no more than 50 percent of the total assets of the acquiring bank or Federal savings association, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application;

(ii) The acquiring bank or Federal savings association is an eligible bank or eligible Federal savings association, the target bank or savings association is not an eligible bank, eligible Federal savings association, or an eligible depository institution, the resulting national bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the applicants in a prefiling communication request and obtain approval from the appropriate OCC licensing office to use the streamlined application;

(iii) The acquiring bank or Federal savings association is an eligible bank or eligible Federal savings association, the target bank or savings association is not an eligible bank, eligible Federal savings association, or an eligible depository institution, the resulting bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank or acquiring Federal savings association, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately

preceding the filing of the application; or

(iv) In the case of a transaction under paragraph (g)(4) of this section, the acquiring bank is an eligible bank, the resulting national bank will be well capitalized immediately following consummation of the transaction, the applicants in a prefiling communication request and obtain approval from the appropriate OCC licensing office to use the streamlined application, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in the bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

(2) Notwithstanding paragraph (j)(1) of this section, an applicant does not qualify for a streamlined business combination application if the transaction is part of a conversion under part 192 of this chapter.

(3) When a business combination qualifies for a streamlined application, the applicant should consult the Comptroller's Licensing Manual to determine the abbreviated application information required by the OCC. The OCC encourages prefiling communications between the applicants and the appropriate OCC licensing office before filing under paragraph (j) of this section.

(k) *Exit notice to OCC*—(1) *Notice required.* As provided in paragraphs (g)(1)(ii), (g)(2)(i)(B), (g)(3)(i)(B)(*1*), (g)(3)(i)(C)(*1*), (g)(6)(ii), and (g)(7)(ii) of this section, a national bank or Federal savings association engaging in a consolidation or merger in which it is not the applicant and the resulting institution must file a notice rather than an application to the appropriate OCC licensing office advising of its intention.

(2) *Timing of notice.* The national bank or Federal savings association shall submit the notice at the time the application to merge or consolidate is filed with the responsible agency under the Bank Merger Act, 12 U.S.C. 1828(c), or if there is no such filing then no later than 30 days prior to the effective date of the merger or consolidation.

(3) *Content of notice.* The notice shall include the following:

(i)(A) A short description of the material features of the transaction, the identity of the acquiring institution, the identity of the state or Federal regulator to whom the application was made, and the date of the application; or

(B) A copy of a filing made with another Federal or state regulatory agency seeking approval from that agency for the transaction under the Bank Merger Act or other applicable statute;

(ii) The planned consummation date for the transaction;

(iii) Information to demonstrate compliance by the national bank or Federal savings association with applicable requirements to engage in the transactions (*e.g.,* board approval or shareholder or accountholder requirements); and

(iv) If the national bank or Federal savings association submitting the notice maintains a liquidation account established pursuant to part 192 of this chapter, the notice must state that the resulting institution will assume such liquidation account.

(4) *Termination of status.* The national bank or Federal savings association shall advise the OCC when the transaction is about to be consummated. Termination of a national bank's or Federal savings association's existence and status as a national banking association or Federal savings association is automatic, and its charter cancelled, upon completion of the statutory and regulatory requirements and consummation of the consolidation or merger. When the national bank or Federal savings association files the notice under paragraph (k)(2) of this section, the OCC provides instructions to the national bank or Federal savings association for terminating its status as a national bank or Federal savings, including surrendering its charter to the OCC immediately after consummation of the transaction.

(5) *Expiration.* If the action contemplated by the notice is not completed within six months after the OCC's receipt of the notice, a new notice must be submitted to the OCC, unless the OCC grants an extension of time.

(l) *Mergers and consolidations; transfer of assets and liabilities to the resulting institution.* (1) In any consolidation or merger in which the resulting institution is a national bank or Federal savings association, on the effective date of the merger or consolidation, all assets and property (real, personal and mixed, tangible and intangible, choses in action, rights, and credits) then owned by each participating institution or which would inure to any of them, shall, immediately by operation of law and without any conveyance, transfer, or further action, become the property of the resulting national bank or Federal savings association. The resulting national bank or Federal savings association shall be deemed to be a continuation of the entity of each participating institution, the rights and obligations of which shall succeed to such rights and obligations and the duties and liabilities connected therewith.

(2) The authority in paragraph (l)(1) of this section is in addition to any authority granted by applicable statutes for specific transactions and is subject to the National Bank Act, the Home Owners' Loan Act, and other applicable statutes.

(m) *Certification of combination; effective date.* (1) When a national bank or Federal savings association is the applicant and will be the resulting entity in a consolidation or merger, after receiving approval from the OCC, it shall complete any remaining steps needed to complete the transaction, provide the OCC with a certification that all other required regulatory or shareholder approvals have been obtained, and inform the OCC of the planned consummation date.

(2) When the transaction is consummated, the applicant shall notify the OCC of the consummation date. The OCC will issue a letter certifying that the combination was effective on the date specified in the applicant's notice.

(n) *Authority for and certain limits on business combinations and other transactions by Federal savings associations* (1) Federal savings associations may enter into business combinations only in accordance with this section, the Bank Merger Act, and sections 5(d)(3)(A) and 10(s) of the Home Owners' Loan Act.

(2) A Federal savings association may consolidate or merge with another depository institution, a state trust company or a credit union, or may engage in another business combination listed in paragraphs (d)(2)(iv) and (v) of this section, or may engage in an other combination listed in paragraph (d)(10), provided that:

(i) The combination is in compliance with, and receives all approvals required under, any applicable statutes and regulations;

(ii) Any resulting Federal savings association meets the requirements for insurance of accounts; and

(iii) If any combining savings association is a mutual savings association, the resulting institution shall be a mutually held savings association, unless:

(A) The transaction is approved under part 192 governing mutual to stock conversions; or

(B) The transaction involves a mutual holding company reorganization under 12 U.S.C. 1467a(o).

(3) Where the resulting institution is a Federal mutual savings association, the OCC may approve a temporary increase in the number of directors of

the resulting institution provided that the association submits a plan for bringing the board of directors into compliance with the requirements of § 5.21(e) within a reasonable period of time.

(4)(i) The Federal savings associations described in paragraph (n)(4)(ii) of this section below must provide affected accountholders with a notice of a proposed account transfer and an option of retaining the account in the transferring Federal savings association. The notice must allow affected accountholders at least 30 days to consider whether to retain their accounts in the transferring Federal savings association.

(ii) The following savings associations must provide the notices:

(A) A Federal mutual savings association transferring account liabilities to an institution the accounts of which are not insured by the Deposit Insurance Fund or the National Credit Union Share Insurance Fund; and

(B) Any Federal mutual savings association transferring account liabilities to a stock form depository institution.

(o) *Procedural requirements for Federal savings association approval of combinations*—(1) *Board approval.* Before a Federal savings association files a notice or application for any consolidation or merger, the combination and combination agreement must be approved by majority vote of the entire board of each constituent Federal savings association in the case of Federal stock savings associations or a two-thirds vote of the entire board of each constituent Federal savings association in the case of Federal mutual savings associations;

(2) *Change of name or home office.* If the name the resulting Federal savings association or the location of the home office of the resulting Federal savings association will be changed as a result of the business combination, the resulting Federal savings association shall amend its charter accordingly;

(3) *Shareholder vote*—(i) *General rule.* Except as otherwise provided in this paragraph (n)(3), an affirmative vote of two-thirds of the outstanding voting stock of any constituent Federal stock savings association shall be required for approval of a consolidation or merger. If any class of shares is entitled to vote as a class pursuant to § 152.4 of this part, an affirmative vote of a majority of the shares of each voting class and two-thirds of the total voting shares shall be required. The required vote shall be taken at a meeting of the savings association.

(ii) *General exception.* Stockholders of the resulting Federal stock savings association need not authorize a consolidation or merger if:

(A) It does not involve an interim Federal savings association or an interim state savings association;

(B) The association's charter is not changed;

(C) Each share of stock outstanding immediately prior to the effective date of the consolidation or merger is to be an identical outstanding share or a treasury share of the resulting Federal stock savings association after such effective date; and

(D) Either:

(*1*) No shares of voting stock of the resulting Federal stock savings association and no securities convertible into such stock are to be issued or delivered under the plan of combination, or

(*2*) The authorized unissued shares or the treasury shares of voting stock of the resulting Federal stock savings association to be issued or delivered under the plan of combination, plus those initially issuable upon conversion of any securities to be issued or delivered under such plan, do not exceed 15 percent of the total shares of voting stock of such association outstanding immediately prior to the effective date of the consolidation or merger.

(iii) *Exceptions for certain combinations involving an interim association.* Stockholders of a Federal stock savings association need not authorize by a two-thirds affirmative vote consolidations or mergers involving an interim Federal savings association or interim state savings association when the resulting Federal stock savings association is acquired pursuant to the regulations of the Board of Governors of the Federal Reserve System at 12 CFR 238.15(e) (relating to the creation of a savings and loan holding company by a savings association). In those cases, an affirmative vote of 50 percent of the shares of the outstanding voting stock of the Federal stock savings association plus one affirmative vote shall be required. If any class of shares is entitled to vote as a class pursuant to § 5.22(g), an affirmative vote of 50 percent of the shares of each voting class plus one affirmative vote shall be required. The required votes shall be taken at a meeting of the association.

(4) *Mutual member vote.* Notwithstanding any other provision of this section, the OCC may require that a consolidation, merger or other business combination be submitted to the voting members of any mutual savings association participating in the proposed transaction at duly called meetings and that the transaction, to be effective, must be approved by such voting members.

■ 18. Section 5.34 is revised to read as follows:

§ 5.34 Operating subsidiaries of a national bank.

(a) *Authority.* 12 U.S.C. 24 (Seventh), 24a, 25b, 93a, 3101 *et seq.*

(b) *Licensing requirements.* A national bank must file an application or notice as prescribed in this section to acquire or establish an operating subsidiary, or to commence a new activity in an existing operating subsidiary.

(c) *Scope.* This section sets forth authorized activities and application or notice procedures for national banks engaging in activities through an operating subsidiary. The procedures in this section do not apply to financial subsidiaries authorized under § 5.39. Unless provided otherwise, this section applies to a Federal branch or agency that acquires, establishes, or maintains any subsidiary that a national bank is authorized to acquire or establish under this section in the same manner and to the same extent as if the Federal branch or agency were a national bank, except that the ownership interest required in paragraphs (e)(2) and (e)(5)(i)(B) of this section shall apply to the parent foreign bank of the Federal branch or agency and not to the Federal branch or agency. The OCC may, at any time, limit a national bank's investment in an operating subsidiary or may limit or refuse to permit any activities in an operating subsidiary for supervisory, legal, or safety and soundness reasons.

(d) *Definitions.* For purposes of this section:

(1) *Authorized product* means a product that would be defined as insurance under section 302(c) of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1407) (GLBA) (15 U.S.C. 6712) that, as of January 1, 1999, the OCC had determined in writing that national banks may provide as principal or national banks were in fact lawfully providing the product as principal, and as of that date no court of relevant jurisdiction had, by final judgment, overturned a determination by the OCC that national banks may provide the product as principal. An authorized product does not include title insurance, or an annuity contract the income of which is subject to treatment under section 72 of the Internal Revenue Code of 1986 (26 U.S.C. 72).

(2) *Well capitalized* means the capital level described in 12 CFR 6.4 or, in the case of a Federal branch or agency, the

capital level described in 12 CFR 4.7(b)(1)(iii).

(3) *Well managed* means, unless otherwise determined in writing by the OCC:

(i) In the case of a national bank:

(A) The national bank has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with its most recent examination; or

(B) In the case of any national bank that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

(ii) In the case of a Federal branch or agency:

(A) The Federal branch or agency has received a composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 at its most recent examination; or

(B) In the case of a Federal branch or agency that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

(e) *Standards and requirements*—(1) *Authorized activities.* (i) A national bank may conduct in an operating subsidiary activities that are permissible for a national bank to engage in directly either as part of, or incidental to, the business of banking, as determined by the OCC, or otherwise under other statutory authority, including:

(A) Providing authorized products as principal; and

(B) Providing title insurance as principal if the national bank or subsidiary thereof was actively and lawfully underwriting title insurance before November 12, 1999, and no affiliate of the national bank (other than a subsidiary) provides insurance as principal. A subsidiary may not provide title insurance as principal if the state had in effect before November 12, 1999, a law which prohibits any person from underwriting title insurance with respect to real property in that state.

(ii) In addition to OCC authorization, before it begins business an operating subsidiary also must comply with other laws applicable to it and its proposed business, including applicable licensing or registration requirements, if any, such as registration requirements under securities laws.

(2) *Qualifying subsidiaries.* (i) An operating subsidiary in which a national bank may invest includes a corporation, limited liability company, limited partnership, or similar entity if:

(A) The bank has the ability to control the management and operations of the subsidiary, and no other person or entity exercises effective operating control over the subsidiary or has the ability to influence the subsidiary's operations to an extent equal to or greater than that of the bank;

(B) The parent bank owns and controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary, or the parent bank otherwise controls the operating subsidiary and no other party controls a percentage of the voting (or similar type of controlling) interest of the operating subsidiary greater than the bank's interest; and

(C) The operating subsidiary is consolidated with the bank under generally accepted accounting principles (GAAP).

(ii) However, the following subsidiaries are not operating subsidiaries subject to this section:

(A) A subsidiary in which the bank's investment is made pursuant to specific authorization in a statute or OCC regulation (*e.g.,* a bank service company under 12 U.S.C. 1861 *et seq.,* a financial subsidiary under section 5136A of the Revised Statutes (12 U.S.C. 24a), or a community development corporation subsidiary under 12 U.S.C. 24 (Eleventh) and part 24; and

(B) A subsidiary in which the bank has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid a loss in connection with a debt previously contracted.

(iii) Notwithstanding the requirements of paragraph (e)(2)(i) of this section,

(A) A national bank must have reasonable policies and procedures to preserve the limited liability of the bank and its operating subsidiaries; and

(B) OCC regulations shall not be construed as requiring a national bank and its operating subsidiaries to operate as a single entity.

(3) *Examination and supervision.* An operating subsidiary conducts activities authorized under this section pursuant to the same authorization, terms and conditions that apply to the conduct of such activities by its parent national bank, unless otherwise specifically provided by statute, regulation, or published OCC policy, including sections 1044 and 1045 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b) with respect to the application of state law. If the OCC determines that the operating subsidiary is operating in violation of law, regulation, or written condition, or in an unsafe or unsound manner or otherwise threatens the safety or soundness of the bank, the OCC will direct the bank or operating subsidiary to take appropriate remedial action, which may include requiring the bank to divest or liquidate the operating subsidiary, or discontinue specified activities. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(4) *Consolidation of figures*—(i) *National banks.* Pertinent book figures of the parent national bank and its operating subsidiary shall be combined for the purpose of applying statutory or regulatory limitations when combination is needed to effect the intent of the statute or regulation, *e.g.,* for purposes of 12 U.S.C. 56, 59, 60, 84, and 371d.

(ii) *Federal branches or agencies.* Transactions conducted by all of a foreign bank's Federal branches and agencies and state branches and agencies, and their operating subsidiaries, shall be combined for the purpose of applying any limitation or restriction as provided in 12 CFR 28.14.

(5) *Procedures*—(i) *Application required.* (A) Except for an operating subsidiary that qualifies for the notice procedures in paragraph (e)(5)(ii) of this section or is exempt from application or notice requirements under paragraph (e)(5)(vi) of this section, a national bank must first submit an application to, and receive prior approval from, the OCC to establish or acquire an operating subsidiary or to perform a new activity in an existing operating subsidiary.

(B) The application must explain, as appropriate, how the bank ''controls'' the enterprise, describing in full detail structural arrangements where control is based on factors other than bank ownership of more than 50 percent of the voting interest of the subsidiary and the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management. In the case of a limited partnership or limited liability company that does not qualify for the notice procedures set forth in paragraph (e)(5)(ii) of this section, the bank must provide a statement explaining why it is not eligible. The application also must include a complete description of the bank's investment in the subsidiary, the proposed activities of the subsidiary, the organizational structure and management of the subsidiary, the relations between the bank and the subsidiary, and other information necessary to adequately describe the

proposal. To the extent that the application relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank must describe the type of insurance activity in which the company is engaged and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. The application must state whether the operating subsidiary will conduct any activity at a location other than the main office or a previously approved branch of the bank. The OCC may require an applicant to submit a legal analysis if the proposal is novel, unusually complex, or raises substantial unresolved legal issues. In these cases, the OCC encourages applicants to have a prefiling meeting with the OCC. Any bank receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(ii) *Notice process only for certain qualifying filings.* (A) Except for an operating subsidiary that is exempt from application or notice procedures under paragraph (e)(5)(vi) of this section, a national bank that is ''well capitalized'' and ''well managed'' may establish or acquire an operating subsidiary, or perform a new activity in an existing operating subsidiary, by providing the appropriate OCC licensing office written notice prior to, or within 10 days after, acquiring or establishing the subsidiary, or commencing the new activity, if:

(*1*) The activity is listed in paragraph (e)(5)(v) of this section;

(*2*) The entity is a corporation, limited liability company, or limited partnership; and

(*3*) The bank:

(*i*) Has the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management (or, in the case of a limited partnership or a limited liability company, has the ability to control the management and operations of the subsidiary by controlling the selection and termination of senior management), and no other person or entity exercises effective operating control over the subsidiary or has the ability to influence the subsidiary's operations to an extent equal to or greater than the bank's;

(*ii*) Holds more than 50 percent of the voting, or equivalent, interests in the subsidiary, and, in the case of a limited partnership or limited liability company, the bank or an operating subsidiary thereof is the sole general partner of the limited partnership or the sole managing member of the limited liability company, provided that under the partnership agreement or limited liability company agreement, limited partners or other limited liability company members have no authority to bind the partnership or limited liability company by virtue solely of their status as limited partners or members; and

(*iii*) Is required to consolidate its financial statements with those of the subsidiary under generally accepted accounting principles (GAAP).

(B) The written notice must include a complete description of the bank's investment in the subsidiary and of the activity conducted and a representation and undertaking that the activity will be conducted in accordance with OCC policies contained in guidance issued by the OCC regarding the activity. To the extent that the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank must describe the type of insurance activity in which the company is engaged and has present plans to conduct. The bank also must list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. Any bank receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(iii) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(iv) *OCC review and approval.* The OCC reviews a national bank's application to determine whether the proposed activities are legally permissible under Federal banking laws and to ensure that the proposal is consistent with safe and sound banking practices and OCC policy and does not endanger the safety or soundness of the parent national bank. As part of this process, the OCC may request additional information and analysis from the applicant.

(v) *Activities eligible for notice.* The following activities qualify for the notice procedures in paragraph (e)(5)(ii) of this section, provided the activity is conducted pursuant to the same terms and conditions as would be applicable if the activity were conducted directly by a national bank:

(A) Holding and managing assets acquired by the parent bank or its operating subsidiaries, including investment assets and property acquired by the bank through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted;

(B) Providing services to or for the bank or its affiliates, including accounting, auditing, appraising, advertising and public relations, and financial advice and consulting;

(C) Making loans or other extensions of credit, and selling money orders, savings bonds, and travelers checks;

(D) Purchasing, selling, servicing, or warehousing loans or other extensions of credit, or interests therein;

(E) Providing courier services between financial institutions;

(F) Providing management consulting, operational advice, and services for other financial institutions;

(G) Providing check guaranty, verification and payment services;

(H) Providing data processing, data warehousing and data transmission products, services, and related activities and facilities, including associated equipment and technology, for the bank or its affiliates;

(I) Acting as investment adviser (including an adviser with investment discretion) or financial adviser or counselor to governmental entities or instrumentalities, businesses, or individuals, including advising registered investment companies and mortgage or real estate investment trusts, furnishing economic forecasts or other economic information, providing investment advice related to futures and options on futures, and providing consumer financial counseling;

(J) Providing tax planning and preparation services;

(K) Providing financial and transactional advice and assistance, including advice and assistance for customers in structuring, arranging, and executing mergers and acquisitions, divestitures, joint ventures, leveraged buyouts, swaps, foreign exchange, derivative transactions, coin and bullion, and capital restructurings;

(L) Underwriting and reinsuring credit related insurance to the extent permitted under section 302 of the GLBA (15 U.S.C. 6712);

(M) Leasing of personal property and acting as an agent or adviser in leases for others;

(N) Providing securities brokerage or acting as a futures commission merchant, and providing related credit and other related services;

(O) Underwriting and dealing, including making a market, in bank permissible securities and purchasing and selling as principal, asset backed obligations;

(P) Acting as an insurance agent or broker, including title insurance to the extent permitted under section 303 of the GLBA (15 U.S.C. 6713);

(Q) Reinsuring mortgage insurance on loans originated, purchased, or serviced by the bank, its subsidiaries, or its affiliates, provided that if the subsidiary enters into a quota share agreement, the subsidiary assumes less than 50 percent of the aggregate insured risk covered by the quota share agreement. A ''quota share agreement'' is an agreement under which the reinsurer is liable to the primary insurance underwriter for an agreed upon percentage of every claim arising out of the covered book of business ceded by the primary insurance underwriter to the reinsurer;

(R) Acting as a finder pursuant to 12 CFR 7.1002 to the extent permitted by published OCC precedent for national banks; [2]

(S) Offering correspondent services to the extent permitted by published OCC precedent for national banks;

(T) Acting as agent or broker in the sale of fixed or variable annuities;

(U) Offering debt cancellation or debt suspension agreements;

(V) Providing real estate settlement, closing, escrow, and related services; and real estate appraisal services for the subsidiary, parent bank, or other financial institutions;

(W) Acting as a transfer or fiscal agent;

(X) Acting as a digital certification authority to the extent permitted by published OCC precedent for national banks, subject to the terms and conditions contained in that precedent;

(Y) Providing or selling public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, promotional and advertising material, postage stamps, and Electronic Benefits Transfer (EBT) script, and similar media, to the extent permitted by published OCC precedent for national banks, subject to the terms and conditions contained in that precedent;

(Z) Providing data processing, and data transmission services, facilities (including equipment, technology, and personnel), databases, advice and access to such services, facilities, databases and advice, for the parent bank and for others, pursuant to 12 CFR 7.5006 to the extent permitted by published OCC precedent for national banks;

(AA) Providing bill presentment, billing, collection, and claims-processing services;

(BB) Providing safekeeping for personal information or valuable confidential trade or business information, such as encryption keys, to the extent permitted by published OCC precedent for national banks;

(CC) Providing payroll processing;

(DD) Providing branch management services;

(EE) Providing merchant processing services except when the activity involves the use of third parties to solicit or underwrite merchants; and

(FF) Performing administrative tasks involved in benefits administration.

(vi) *No application or notice required.* A national bank may acquire or establish an operating subsidiary, or perform a new activity in an existing operating subsidiary, without filing an application or providing notice to the OCC, if the bank is well managed and well capitalized and the:

(A) Activities of the new subsidiary are limited to those activities previously reported by the bank in connection with the establishment or acquisition of a prior operating subsidiary;

(B) Activities in which the new subsidiary will engage continue to be legally permissible for the subsidiary;

(C) Activities of the new subsidiary will be conducted in accordance with any conditions imposed by the OCC in approving the conduct of these activities for any prior operating subsidiary of the bank; and

(D) The standards set forth in paragraphs (e)(5)(ii)(A)(*2*) and (*3*) of this section are satisfied.

(vii) *Fiduciary powers.* (A) If an operating subsidiary proposes to accept fiduciary appointments for which fiduciary powers are required, such as acting as trustee or executor, then the national bank must have fiduciary powers under 12 U.S.C. 92a and the subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary.

(B) Unless the subsidiary is a registered investment adviser, if an operating subsidiary proposes to exercise investment discretion on behalf of customers or provide investment advice for a fee, the national bank must have prior OCC approval to exercise fiduciary powers pursuant to § 5.26 and 12 CFR part 9.

(viii) *Expiration of approval.* Approval expires if the national bank has not established or acquired the operating subsidiary, or commenced the new activity in an existing operating subsidiary within 12 months after the date of the approval, unless the OCC shortens or extends the time period.

(6) *Grandfathered operating subsidiaries.* Notwithstanding the requirements for a qualifying operating subsidiary in paragraph (e)(2) of this section and unless otherwise notified by the OCC with respect to a particular operating subsidiary, an entity that a national bank lawfully acquired or established as an operating subsidiary before April 24, 2008 may continue to operate as a national bank operating subsidiary under this section, provided that the bank and the operating subsidiary were, and continue to be, conducting authorized activities in compliance with the standards and requirements applicable when the bank established or acquired the operating subsidiary.

(7) *Annual Report on Operating Subsidiaries*—(i) *Filing requirement.* Each national bank shall prepare and file with the OCC an Annual Report on Operating Subsidiaries containing the information set forth in paragraph (e)(7)(ii) of this section for each of its operating subsidiaries that:

(A) Is not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)); and

(B) Does business directly with consumers in the United States. For purposes of paragraph (e)(7) of this section, an operating subsidiary, or any subsidiary thereof, does business directly with consumers if, in the ordinary course of its business, it provides products or services to individuals to be used primarily for personal, family, or household purposes.

(ii) *Information required.* The Annual Report on Operating Subsidiaries must contain the following information for each covered operating subsidiary listed:

(A) The name and charter number of the parent national bank;

(B) The name (include any ''dba'' (doing business as), abbreviated names, or trade names used to identify the operating subsidiary when it does business directly with consumers), mailing address (include the street address or post office box, city, state, and zip code), email address (if any), and telephone number of the operating subsidiary;

(C) The principal place of business of the operating subsidiary, if different

[2] *See, e.g.,* the OCC's monthly publication ''Interpretations and Actions.'' Beginning with the May 1996 issue, the OCC's Web site provides access to electronic versions of ''Interpretations and Actions'' (*www.occ.gov*).

from the address provided pursuant to paragraph (e)(7)(ii)(B) of this section; and

(D) The lines of business in which the operating subsidiary is doing business directly with consumers by designating the appropriate code contained in appendix B (NAICS Activity Codes for Commonly Reported Activities) to the Instructions for Preparation of Report of Changes in Organizational Structure, Form FR Y–10, a copy of which is set forth on the OCC's Internet Web page at *www.occ.gov*. If the operating subsidiary is engaged in an activity not set forth in this list, a national bank shall report the code 0000 and provide a brief description of the activity.

(iii) *Filing time frames and availability of information.* Each national bank's Annual Report on Operating Subsidiaries shall contain information current as of December 31st for the year prior to the year the report is filed. The national bank shall submit its Annual Report on Operating Subsidiaries on or before January 31st each year. The national bank may submit the Annual Report on Operating Subsidiaries electronically or in another format prescribed by the OCC. The OCC will make available to the public the information contained in the Annual Report on Operating Subsidiaries at *www.helpwithmybank.gov*.

■ 19. Section 5.35 is revised to read as follows:

§ 5.35 Bank service company investments by a national bank or Federal savings association investment.

(a) *Authority.* 12 U.S.C. 93a, 1462a, 1463, 1464, 1861–1867, 5412(b)(2)(B).

(b) *Licensing requirements.* Except where otherwise provided, a national bank or Federal savings association shall submit a notice and obtain prior OCC approval to invest in the equity of a bank service company or to perform new activities in an existing bank service company.

(c) *Scope.* This section describes the procedures and requirements regarding OCC review and approval of a notice by a national bank or Federal savings association to invest in the equity of a bank service company. The OCC may, at any time, limit a national bank's or Federal savings association's investment in a bank service company or may limit or refuse to permit any activities in any bank service company for which a national bank or Federal savings association is the principal investor for supervisory, legal, or safety and soundness reasons.

(d) *Definitions*—(1) *Bank service company* means a corporation or limited liability company organized to provide services authorized by the Bank Service Company Act, 12 U.S.C. 1861 *et seq.,* all of whose capital stock is owned by one or more insured depository institutions in the case of a corporation, or all of the members of which are one or more insured depository institutions in the case of a limited liability company.

(2) *Limited liability company* means any company, partnership, trust, or similar business entity organized under the law of a state (as defined in section 3 of the Federal Deposit Insurance Act) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company.

(3) *Depository institution* for purposes of this section, means, except when such term appears in connection with the term 'insured depository institution', an insured bank (as defined in section 3 of the Federal Deposit Insurance Act), a savings association (as defined in section 3 of the Federal Deposit Insurance Act), a financial institution subject to examination by the appropriate Federal banking agency or the National Credit Union Administration Board, or a financial institution the accounts or deposits of which are insured or guaranteed under state law and are eligible to be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.

(4) *Insured depository institution,* for purposes of this section, has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(5) *Invest* includes making any advance of funds to a bank service company, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered before the payment was made.

(6) *Principal investor* means the insured depository institution that has the largest amount invested in the equity of a bank service company. In any case where two or more insured depository institutions have equal amounts invested and no other insured depository institution has a larger amount invested, the bank service company shall designate one of those insured depository institutions as its principal investor.

(e) *Standards and requirements.* A national bank or Federal savings association may invest in a bank service company that conducts activities described in paragraphs (f)(3) and (f)(4) of this section and activities (other than taking deposits) permissible for the national bank or Federal savings association and other insured depository institution shareholders or members of the bank service company.

(f) *Procedures*—(1) *OCC notice and approval required.* Except as provided in paragraphs (f)(3) and (f)(4) of this section, a national bank or Federal savings association that intends to invest in the equity of a bank service company, or to perform new activities in an existing bank service company, must submit a notice to and receive prior approval from the OCC. The notice must include the information required by paragraph (g) of this section. The OCC approves or denies a proposed investment within 60 days after the filing is received by the OCC, unless the OCC notifies the bank prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or policy issue.

(2) *Expedited review for certain activities.* (i) A notice to invest in the equity of a bank service company, or to perform new activities in an existing bank service company, that meets the requirements of this paragraph is deemed approved by the OCC as of the 30th day after the notice is received by the OCC, unless the OCC notifies the filer prior to that date that the filing is not eligible for expedited review or the expedited review process is extended. Any bank or savings association making an investment pursuant to this paragraph is deemed to have agreed that the bank service company will conduct the activity in a manner consistent with the published OCC guidance.

(ii) A notice is eligible for expedited review if all of the following requirements are met:

(A) The national bank or Federal savings association is ''well capitalized'' and ''well managed'' as defined in § 5.34(d) or § 5.38(d), as applicable; and

(B) The bank service company engages only in activities that are permissible for the bank service company under 12 U.S.C. 1864 and that are listed in § 5.34(e)(5)(v) or § 5.38(e)(5)(v), as applicable.

(3) *Investments requiring no approval or notice.* A national bank or Federal savings association does not need to submit a notice or obtain OCC approval to invest in a bank service company, or to perform a new activity in an existing bank service company, if the bank service company will provide only the following services only for depository institutions: Check and deposit posting and sorting; computation and posting of interest and other credits and charges; preparation and mailing of checks, statements, notices, and similar items; or any other clerical, bookkeeping,

accounting, statistical, or similar functions.

(4) *Federal Reserve approval.* A national bank or Federal savings association also may, with the approval of the Board of Governors of the Federal Reserve System (Federal Reserve Board), invest in the equity of a bank service company that provides any other service (except deposit taking) that the Federal Reserve Board has determined, by regulation, to be permissible for a bank holding company under 12 U.S.C. 1843(c)(8).

(5) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to a request for approval to invest in a bank service company. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all provisions of §§ 5.8, 5.10, and 5.11 apply.

(g) *Required information.* A notice required under paragraph (f)(1) of this section must contain the following:

(1) The name and location of the bank service company;

(2) A complete description of the activities the bank service company will conduct and a representation and undertaking that the activities will be conducted in accordance with OCC guidance. To the extent the notice relates to the initial affiliation of the national bank or Federal savings association with a company engaged in insurance activities, the national bank or Federal savings association should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The national bank or Federal savings association also must list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

(3) A complete description of the national bank's or Federal savings association's investment in the bank service company and information demonstrating that the national bank or Federal savings association will comply with the investment limitations of paragraph (i) of this section; and

(4) Information demonstrating that the bank service company will perform only those services that each insured depository institution shareholder or member is authorized to perform under applicable Federal or state law and will perform such services only at locations in a state in which each such shareholder or member is authorized to perform such services unless performing services that are authorized by the Federal Reserve Board under the authority of 12 U.S.C. 1865(b).

(h) *Examination and supervision.* Each bank service company in which a national bank or Federal savings association is the principal investor is subject to examination and supervision by the OCC in the same manner and to the same extent as that national bank or Federal savings association. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(i) *Investment limitations.* A national bank or Federal savings association may not invest more than 10 percent of its capital and surplus in a bank service company. In addition, the national bank's or Federal savings association's total investments in all bank service companies may not exceed five percent of the national bank's or Federal savings association's total assets.

■ 20. Section 5.36 is amended by:

■ a. Revising the section heading;

■ b. In paragraphs (d)(1), (e) introductory text, and (g)(1), by removing the phrase ''the appropriate district office'' and adding in its place the phrase ''the appropriate OCC licensing office'';

■ c. In paragraph (d)(2), remove the phrase ''paragraph (c)(1)'' and add in its place the phrase ''paragraph (d)(1)''; and

■ d. In paragraph (g)(1), remove the phrase ''paragraph (g)(i)'' each time it appears and add in its place the phrase ''paragraph (g)(1)''.

The revision reads as follows:

§ 5.36 Other equity investments by a national bank.

* * * * *

■ 21. Section 5.37 is revised to read as follows:

§ 5.37 Investment in national bank or Federal savings association premises.

(a) *Authority.* 12 U.S.C. 29, 93a, 317d, 1464(c)(2), 1464(c)(4)(B), 1828(m), and 5412(b)(2)(B).

(b) *Scope.* This section addresses a national bank's or Federal savings association's investment in banking premises and other premises-related investments, loans, or indebtedness. This section also sets forth the quantitative investment limitations and procedures governing the OCC's review and approval of an application by a national bank or Federal savings association to invest in these premises.

(c) *Definitions.* The following definitions apply for purposes of this section.

(1) *Banking premises* includes:

(i) Premises that are owned and occupied (or to be occupied, if under construction) by a national bank or Federal savings association, its respective branches, or its consolidated subsidiaries;

(ii) Capitalized leases and leasehold improvements, vaults, and fixed machinery and equipment;

(iii) Remodeling costs to existing premises;

(iv) Real estate acquired and intended, in good faith, for use in future expansion; or

(v) Parking facilities that are used by customers or employees of the national bank or Federal savings association.

(2) *Capital stock* means, for national banks and Federal stock savings associations, the amount of common stock outstanding and unimpaired plus the amount of perpetual preferred stock outstanding and unimpaired. With respect to Federal mutual savings associations, ''capital stock'' should be read to mean the amount of the association's retained earnings.

(3) *Capital and surplus* means:

(i) A national bank's or Federal savings association's tier 1 and tier 2 capital calculated under 12 CFR part 3, as applicable, as reported in the bank's or savings association's Consolidated Reports of Condition and Income (Call Reports) filed under 12 U.S.C. 161 or 12 U.S.C. 1464(v), respectively; plus

(ii) The balance of a national bank's or Federal savings association's allowance for loan and lease losses not included in the bank's or savings association's tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (c)(3)(i) of this section, as reported in the national bank's or Federal savings association's Call Reports filed under 12 U.S.C. 161 or 1464(v), respectively.

(d) *Procedure*—(1) *Premises application*—(i) *When required.* A national bank or Federal savings association shall submit an application to the appropriate OCC supervisory office to invest in banking premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of the national bank or Federal savings association, or to make loans to or upon the security of the stock of such corporation, if the aggregate of all such investments and loans, together with the indebtedness incurred by any such corporation that is an affiliate of the national bank or Federal savings association, as defined in 12 U.S.C. 221a or 12 U.S.C. 1462, respectively, will exceed the amount of the capital stock of the national bank or Federal savings association, or, in the case of a Federal mutual savings

association the amount of retained earnings.

(ii) *Contents of premises application.* The application must include:

(A) A description of the national bank's or Federal savings association's present investment in banking premises;

(B) The investment in banking premises that the national bank or Federal savings association intends to make, and the business reason for making the investment; and

(C) The amount by which the national bank's or Federal savings association's aggregate investment will exceed the amount of the national bank's or Federal stock savings association's capital stock, or, in the case of a Federal mutual savings association, the amount of retained earnings.

(2) *Approval of premises application.* An application from a national bank or Federal savings association to invest in banking premises or in certain banking premises-related investments, loans or indebtedness, as described in paragraph (d)(1)(i) of this section, is deemed approved as of the 30th day after the filing is received by the OCC, unless the OCC notifies the national bank or Federal savings association prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or policy issue. An approval for a specified amount under this section remains valid up to that amount until the OCC notifies the national bank or Federal savings association otherwise.

(3) *Premises notice process*—(i) *General rule.* Notwithstanding paragraph (d)(1)(i) of this section, a national bank or Federal savings association that is rated 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS) may make an aggregate investment in banking premises up to 150 percent of the national bank's or Federal savings association's capital and surplus without the OCC's prior approval, provided that the national bank or Federal savings association is well capitalized as defined in 12 CFR part 6 and will continue to be well capitalized after the investment or loan is made. However, the national bank or Federal savings association shall notify the appropriate OCC supervisory office in writing of the investment within 30 days after the investment or loan is made. The written notice must include a description of the national bank's or Federal savings association's investment or loan.

(ii) *Exception.* If a Federal savings association that would otherwise be eligible for the premises notice process described in paragraph (d)(3)(i) of this section proposes to establish or acquire a subsidiary to make an investment in banking premises, or if investing in banking premises would be a new activity for such a subsidiary, the Federal savings association would not be eligible for the premises notice process and would be required to comply with the provisions of § 5.59 in the case of a service corporation, or § 5.38 in the case of an operating subsidiary.

(4) *Service corporation.* A Federal savings association that invests in banking premises through a service corporation is not subject to the premises application and premises notice requirements of paragraph (d) of this section; however, it must include this investment when calculating the quantitative limitations in paragraph (d) of this section, and must comply with 12 CFR 5.59.

(5) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

■ 22. Section 5.38 is added to read as follows:

§ 5.38 Operating subsidiaries of a Federal savings association.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, 1465, 1828, 5412(b)(2)(B).

(b) *Licensing requirements.* When required by section 18(m) of the Federal Deposit Insurance Act, a Federal savings association must file an application as prescribed in this section to acquire or establish an operating subsidiary, or to commence a new activity in an existing operating subsidiary.

(c) *Scope.* This section sets forth authorized activities and application procedures for Federal savings associations engaging in activities through an operating subsidiary. The OCC may, at any time, limit a Federal savings association's investment in an operating subsidiary or may limit or refuse to permit any activities in an operating subsidiary for supervisory, legal, or safety and soundness reasons.

(d) *Definitions.* For purposes of this section:

(1) *Well capitalized* means the capital level described in 12 CFR 6.4.

(2) *Well managed* means, unless otherwise determined in writing by the OCC:

(i) The Federal savings association has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with its most recent examination; or

(ii) In the case of any Federal savings association that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

(e) *Standards and requirements*—(1) *Authorized activities.* (i) A Federal savings association may conduct in an operating subsidiary activities that are permissible for a Federal savings association to engage in directly.

(ii) In addition to OCC authorization, before it begins business an operating subsidiary also must comply with other laws applicable to it and its proposed business, including applicable licensing or registration requirements, if any, such as registration requirements under securities laws.

(2) *Qualifying subsidiaries.* (i) An operating subsidiary in which a Federal savings association may invest includes a corporation, limited liability company, limited partnership, or similar entity if:

(A) The savings association has the ability to control the management and operations of the subsidiary, and no other person or entity exercises effective operating control over the subsidiary or has the ability to influence the subsidiary's operations to an extent equal to or greater than that of the savings association;

(B) The parent savings association owns and controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary, or the parent savings association otherwise controls the operating subsidiary and no other party controls a percentage of the voting (or similar type of controlling) interest of the operating subsidiary greater than the savings association's interest; and

(C) The operating subsidiary is consolidated with the savings association under generally accepted accounting principles (GAAP).

(ii) Subject to the requirements in this section, a Federal savings association may hold another insured depository institution as an operating subsidiary.

(iii) However, the following subsidiaries are not operating subsidiaries subject to this section:

(A) A subsidiary in which the savings association's investment is made pursuant to specific authorization in a statute or OCC regulation (*e.g.,* a service corporation under 12 U.S.C. 1464(c)(4) or a bank service company under 12 U.S.C. 1861 *et seq.*); and

(B) A subsidiary in which the savings association has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful

claim, or to avoid a loss in connection with a debt previously contracted.

(iv) Notwithstanding the requirements of paragraph (e)(2)(i) of this section:

(A) A Federal savings association must have reasonable policies and procedures to preserve the limited liability of the savings association and its operating subsidiaries; and

(B) OCC regulations shall not be construed as requiring a Federal savings association and its operating subsidiaries to operate as a single entity.

(3) *Examination and supervision.* An operating subsidiary conducts activities authorized under this section pursuant to the same authorization, terms and conditions that apply to the conduct of such activities by its parent Federal savings association, unless otherwise specifically provided by statute, regulation, or published OCC policy, including sections 1045 and 1046 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b and 1465) with respect to the application of state law. If the OCC determines that the operating subsidiary is operating in violation of law, regulation, or written condition, or in an unsafe or unsound manner or otherwise threatens the safety or soundness of the savings association, the OCC will direct the savings association or operating subsidiary to take appropriate remedial action, which may include requiring the savings association to divest or liquidate the operating subsidiary, or discontinue specified activities. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(4) *Consolidation of figures.* (i) Except as provided in paragraph (e)(4)(ii) of this section, pertinent book figures of the parent Federal savings association and its operating subsidiary shall be combined for the purpose of applying statutory or regulatory limitations when combination is needed to effect the intent of the statute or regulation, *e.g.,* for purposes of 12 U.S.C. 1464(c) and 1464(u).

(ii) Consolidation for purposes of calculating portfolio assets and qualified thrift investments is subject to 12 U.S.C. 1467a(m)(5).

(5) *Procedures*—(i) *Application required.* (A) A Federal savings association must first submit an application to, and receive prior approval from, the OCC to establish or acquire an operating subsidiary, or to perform a new activity in an existing operating subsidiary.

(B) The application must explain, as appropriate, how the savings association ''controls'' the enterprise, describing in full detail structural arrangements where control is based on factors other than savings association ownership of more than 50 percent of the voting interest of the subsidiary and the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management. In the case of a limited partnership or limited liability company that does not qualify for the expedited review procedure set forth in paragraph (e)(5)(ii) of this section, the savings association must provide a statement explaining why it is not eligible. The application also must include a complete description of the savings association's investment in the subsidiary, the proposed activities of the subsidiary, the organizational structure and management of the subsidiary, the relations between the savings association and the subsidiary, and other information necessary to adequately describe the proposal. To the extent that the application relates to the initial affiliation of the savings association with a company engaged in insurance activities, the savings association must describe the type of insurance activity in which the company is engaged and has present plans to conduct. The savings association must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. The application must state whether the operating subsidiary will conduct any activity at a location other than the home office or a previously approved branch of the savings association. The OCC may require an applicant to submit a legal analysis if the proposal is novel, unusually complex, or raises substantial unresolved legal issues. In these cases, the OCC encourages applicants to have a prefiling meeting with the OCC. Any savings association receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(ii) *Expedited review.* (A) An application to establish or acquire an operating subsidiary, or to perform a new activity in an existing operating subsidiary, that meets the requirements of this paragraph is deemed approved by the OCC as of the 30th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended under § 5.13(a)(2). Any savings association receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(B) An application is eligible for expedited review if all of the following requirements are met:

(*1*) The savings association is ''well capitalized'' and ''well managed'';

(*2*) The activity is listed in paragraph (e)(5)(v) this section;

(*3*) The entity is a corporation, limited liability company, or limited partnership; and

(*4*) The savings association:

(*i*) Has the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management (or, in the case of a limited partnership or a limited liability company, has the ability to control the management and operations of the subsidiary by controlling the selection and termination of senior management), and no other person or entity has the ability to control the management or operations of the subsidiary;

(*ii*) Holds more than 50 percent of the voting, or equivalent, interests in the subsidiary, and, in the case of a limited partnership or limited liability company, the savings association or an operating subsidiary thereof is the sole general partner of the limited partnership or the sole managing member of the limited liability company, provided that under the partnership agreement or limited liability company agreement, limited partners or other limited liability company members have no authority to bind the partnership or limited liability company by virtue solely of their status as limited partners or members; and

(*iii*) Is required to consolidate its financial statements with those of the subsidiary under generally accepted accounting principles (GAAP). An applicant proposing to qualify for expedited review must include in the application all necessary information showing the application meets the requirements.

(iii) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the

OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(iv) *OCC review and approval.* The OCC reviews a Federal savings association's application to determine whether the proposed activities are legally permissible under Federal savings association law and to ensure that the proposal is consistent with safe and sound banking practices and OCC policy and does not endanger the safety or soundness of the parent Federal savings association. As part of this process, the OCC may request additional information and analysis from the applicant.

(v) *Activities eligible for expedited review.* The following activities qualify for the expedited review procedures in paragraph (e)(5)(ii) of this section, provided the activity is conducted pursuant to the same terms and conditions as would be applicable if the activity were conducted directly by a Federal savings association:

(A) Holding and managing assets acquired by the parent savings association or its operating subsidiaries, including investment assets and property acquired by the savings association through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted;

(B) Providing services to or for the savings association or its affiliates, including accounting, auditing, appraising, advertising and public relations, and financial advice and consulting;

(C) Making loans or other extensions of credit, and selling money orders and travelers checks;

(D) Purchasing, selling, servicing, or warehousing loans or other extensions of credit, or interests therein;

(E) Providing management consulting, operational advice, and services for other financial institutions;

(F) Providing check payment services;

(G) Acting as investment adviser (including an adviser with investment discretion) or financial adviser or counselor to governmental entities or instrumentalities, businesses, or individuals, including advising registered investment companies and mortgage or real estate investment trusts;

(H) Providing financial and transactional advice and assistance, including advice and assistance for customers in structuring, arranging, and executing mergers and acquisitions, divestitures, joint ventures, leveraged buyouts, swaps, foreign exchange, derivative transactions, coin and bullion, and capital restructurings;

(I) Underwriting and reinsuring credit life and disability insurance;

(J) Leasing of personal property;

(K) Providing securities brokerage;

(L) Underwriting and dealing, including making a market, in savings association permissible securities and purchasing and selling as principal, asset backed obligations;

(M) Acting as an insurance agent or broker for credit life, disability, and unemployment insurance; single property interest insurance; and title insurance;

(N) Offering correspondent services to the extent permitted by published OCC precedent for Federal savings associations;

(O) Acting as agent or broker in the sale of fixed annuities;

(P) Offering debt cancellation or debt suspension agreements;

(Q) Providing escrow services;

(R) Acting as a transfer agent; and

(S) Providing or selling postage stamps.

(vi) *Redesignation.* A Federal savings association that proposes to redesignate a service corporation as an operating subsidiary must submit a notification to the OCC at least 30 days prior to the redesignation date. The notification must include a description of how the redesignated service corporation meets all of the requirements of this section to be an operating subsidiary, a resolution of the savings association's board of directors approving the redesignation, and the proposed effective date of the redesignation. The savings association may effect the redesignation on the proposed date unless the OCC notifies the savings association otherwise prior to that date. The OCC may require an application if the redesignation presents policy, supervisory, or legal issues.

(vii) *Fiduciary powers.* (A) If an operating subsidiary proposes to accept fiduciary appointments for which fiduciary powers are required, such as acting as trustee or executor, then the Federal savings association must have fiduciary powers under 12 U.S.C. 1464(n) and the subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary.

(B) Unless the subsidiary is a registered investment adviser, if an operating subsidiary proposes to exercise investment discretion on behalf of customers or provide investment advice for a fee, the Federal savings association must have prior OCC approval to exercise fiduciary powers pursuant to § 5.26 (or a predecessor provision) and 12 CFR part 150.

(viii) *Expiration of approval.* Approval expires if the Federal savings association has not established or acquired the operating subsidiary, or commenced the new activity in an existing operating subsidiary within 12 months after the date of the approval, unless the OCC shortens or extends the time period.

(6) *Grandfathered operating subsidiaries.* Notwithstanding the requirements for a qualifying operating subsidiary in paragraph (e)(2) of this section and unless otherwise notified by the OCC with respect to a particular operating subsidiary, an entity that a Federal savings association lawfully acquired or established as an operating subsidiary before May 18, 2015, may continue to operate as a Federal savings association operating subsidiary under this section, provided that the savings association and the operating subsidiary were, and continue to be, conducting authorized activities in compliance with the standards and requirements applicable when the savings association established or acquired the operating subsidiary.

(7) *Issuances of securities by operating subsidiaries.* An operating subsidiary shall not state or imply that the securities it issues are covered by Federal deposit insurance. An operating subsidiary shall not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that the controlling Federal savings association is insolvent or has been placed into receivership. For as long as any securities are outstanding, the controlling Federal savings association must maintain all records generated through each securities issuance in the ordinary course of business, including but not limited to a copy of the prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by the OCC.

■ 23. Section 5.39 is amended by:

■ a. Revising the section heading; and

■ b. In paragraphs (i)(1)(i) and (ii), and (i)(2), removing the phrase ''the appropriate district office'' and adding in its place the phrase ''the appropriate OCC licensing office''.

The revision reads as follows:

§ 5.39 Financial subsidiaries of a national bank.

* * * * *

■ 24. Section 5.40 is revised to read as follows:

§ 5.40 Change in location of a main office of a national bank or home office of a Federal savings association.

(a) *Authority.* 12 U.S.C. 30, 93a, 1462a, 1463, 1464, 1828, 2901–2907 and 5412(b)(2)(B).

(b) *Scope.* This section describes OCC procedures and approval standards for an application or a notice by a national bank to change the location of its main office or by a Federal savings association to change the location of its home office.[3] A national bank or Federal savings association shall follow the procedures described in paragraph (c) of this section to relocate its main office or home office, as applicable.

(c) *Licensing requirements and procedures*—(1) *Main office or home office relocation to an authorized branch location within city, town, or village limits.* A national bank or Federal savings association may change the location of its main office or home office, as applicable, to an authorized branch location (approved or existing branch site) within the limits of the same city, town, or village. The national bank or Federal savings association shall give prior notice to the appropriate OCC licensing office before the relocation. The notice must include the new address of the main office or home office, as applicable, and the effective date of the relocation.

(2) *To any other location*—(i) *National banks.* A national bank shall submit an application to the appropriate OCC licensing office and obtain prior OCC approval to relocate its main office to any other location in the city, town, or village in which the main office of the bank is located other than an authorized branch location or to any other location within 30 miles of the limits of such city, town, or village. If relocating the main office outside the limits of its city, town, or village, a national bank shall also obtain the approval of shareholders owning two-thirds of the voting stock of the bank and shall amend its articles of association.

(ii) *Federal savings associations.* A Federal savings association shall submit an application to the appropriate OCC licensing office and obtain prior OCC approval to relocate its home office to any location other than an authorized branch location within the city, town, or village in which the home office of the savings association is located. If relocating the home office outside the limits of its city, town, or village, a Federal savings association shall obtain any shareholder approval required under its charter for such relocation and shall amend its charter.

(3) *Establishment of a branch at site of former main office or home office.* A national bank or Federal savings association desiring to establish a branch at its former main office or home office location, as applicable, shall follow the provisions of § 5.30 or § 5.31, respectively.

(4) *Expedited review.* A main office or home office relocation application submitted by an eligible national bank or eligible Federal savings association under paragraph (c)(2) of this section is deemed approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC (or in the case of a short-distance relocation the 30th day after the filing is received by the OCC), whichever is later, unless the OCC notifies the bank or savings association prior to that time that the filing is not eligible for expedited review, or the expedited review period is extended, under § 5.13(a)(2).

(5) *Exceptions to rules of general applicability.* (i) Sections 5.8, 5.9, 5.10, and 5.11 do not apply to a main office or home office relocation to an authorized branch location within the limits of the city, town, or village as described in paragraph (c)(1) of this section. However, if the OCC concludes that the notice under paragraph (c)(1) of this section presents a significant or novel policy, supervisory, or legal issue, the OCC may determine that any or all parts of §§ 5.8, 5.9, 5.10, and 5.11 apply.

(ii) The comment period on any application filed under paragraph (c)(2) of this section to engage in a short-distance relocation of a main office or home office is 15 days.

(d) *Expiration of approval.* Approval expires if the national bank or Federal savings association has not opened its main office or home office, as applicable, at the relocated site within 18 months of the date of approval, unless the OCC grants an extension.

■ 25. Section 5.42 is revised to read as follows:

§ 5.42 Corporate title of a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 21a, 30, 93a, 1462a, 1463, 1464, 1467a, 2901 *et. seq.* and, 5412(b)(2)(B).

(b) *Scope.* This section describes the method by which a national bank or Federal savings association may change its corporate title.

(c) *Standards.* (1) A national bank or Federal savings association may change its corporate title provided that the new title complies with applicable laws, including 18 U.S.C. 709, regarding false advertising and the misuse of names to indicate a Federal agency, and any applicable OCC guidance.

(2) For a national bank, the new title must include the word ''national.''

(d) *Procedures*—(1) *Notice process.* A national bank or Federal savings association shall promptly notify the appropriate OCC licensing office if it changes its corporate title. The notice must contain the old and new titles and the effective date of the change.

(2) *Amendment to articles of association.* A national bank whose corporate title is specified in its articles of association shall amend its articles, in accordance with the procedures of 12 U.S.C. 21a, to change its title.

(3) *Amendment to charter.* A Federal savings association shall change its title by amending its charter in accordance with 12 CFR 5.21 or 5.22, as applicable.

(4) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, 5.11, and 5.13(a) do not apply to a national bank or Federal savings association's change of corporate title. However, if the OCC concludes that the application presents a significant or novel policy, supervisory, or legal issue, the OCC may determine that any or all parts of §§ 5.8, 5.9, 5.10, 5.11, and 5.13(a) apply.

■ 26. Section 5.45 is added to read as follows:

§ 5.45 Increases in permanent capital of a Federal stock savings association.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, 1467a, 1831o and 5412(b)(2)(B).

(b) *Licensing requirements.* Generally a Federal savings association is not required to apply for an increase in capital unless the method of increase itself requires a filing (such as issuance of a new class of stock). However, in certain circumstances, a Federal stock savings association is required to submit an application and obtain OCC approval.

(c) *Scope.* This section describes procedures and standards relating to a transaction resulting in an increase in a Federal stock savings association's permanent capital.

[3] A national bank's main office is the place identified in the bank's original organization certificate under 12 U.S.C. 22 or the subsequent location to which the main office has been changed under this § 5.40, 12 U.S.C. 30(b), or other applicable law, as reflected in the national bank's amended articles of association. A Federal savings association's home office is the office identified as such in the savings association's original charter or the subsequent location to which the home office has been changed under this § 5.40, or other applicable law, as reflected in the savings association's amended charter. These terms are functionally the same but are used in our regulations in order to be consistent with the relevant statutes that govern national banks and Federal savings associations, respectively.

(d) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to increases in a Federal stock savings association's permanent capital.

(e) *Definitions.* For the purposes of this section the following definitions apply:

(1) *Capital plan* means a plan describing the manner and schedule by which a Federal savings association will attain specified capital levels or ratios and a capital restoration plan filed with the OCC under 12 U.S.C. 1831o and 12 CFR 6.5.

(2) *Capital stock* means the total amount of common stock and preferred stock.

(3) *Capital surplus* means the total of:

(i) The amount paid in on capital stock in excess of the par or stated value;

(ii) Direct capital contributions representing the amounts paid in to the Federal stock savings association other than for capital stock;

(iii) The amount transferred from retained net income; and

(iv) The amount transferred from retained net income reflecting stock dividends.

(4) *Permanent capital* means the sum of capital stock and capital surplus.

(5) *Retained net income* means the net income of a specified period less the amount of all dividends and other capital distributions declared in that period.

(f) *Policy.* In determining whether to approve a proposed increase in a Federal stock savings association's permanent capital, the OCC considers whether the change is:

(1) Consistent with law, regulation, and OCC policy thereunder;

(2) Provides an adequate capital structure; and

(3) If appropriate, complies with the savings association's capital plan.

(g) *Procedures*—(1) *When prior approval is required.* A Federal stock savings association must submit an application to the appropriate OCC licensing office and obtain prior OCC approval to increase its permanent capital if the savings association is:

(i) Required to receive OCC approval pursuant to letter, order, directive, written agreement or otherwise;

(ii) Selling common or preferred stock for consideration other than cash; or

(iii) Receiving a material noncash contribution to capital surplus.

(2) *Content of application.* The application must:

(i) Describe the type and amount of the proposed change in permanent capital and explain the reason for the change;

(ii) In the case of a material noncash contribution to capital, provide a description of the method of valuing the contribution; and

(iii) State if the savings association is subject to a capital plan with the OCC and how the proposed change would conform to a capital plan or if a capital plan is otherwise required in connection with the proposed change in permanent capital.

(3) *Expedited review.* An eligible savings association's application is deemed approved by the OCC 15 days after the date the OCC receives the application, unless the OCC notifies the savings association prior to that date that the application is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2).

(4) *Notice of increase.* (i) After a savings association completes an increase in capital it shall submit a notice to the appropriate OCC licensing office. The notice must contain:

(A) The amount, including the par value of the stock, and effective date of the increase;

(B) A certification that the funds have been paid in, if applicable; and

(C) A statement that the savings association has complied with all laws, regulations and conditions imposed by the OCC.

(5) *Expiration of approval.* Approval expires if a Federal savings association has not completed its change in permanent capital within one year of the date of approval.

(h) *Offers and sales of stock.* A savings association shall comply with the Securities Offering Disclosure Rules in 12 CFR part 197 for offers and sales of common and preferred stock.

(i) *Shareholder approval.* A savings association shall obtain the necessary shareholder approval required by statute for any change in its permanent capital.

■ 27. Section 5.46 is revised to read as follows:

§ 5.46 Changes in permanent capital of a national bank.

(a) *Authority.* 12 U.S.C. 21a, 51a, 51b, 51b–1, 52, 56, 57, 59, 60, and 93a.

(b) *Licensing requirements.* A national bank shall submit an application and obtain OCC approval to decrease its permanent capital. Generally, a national bank need only submit a notice to increase its permanent capital, although, in certain circumstances, a national bank shall be required to submit an application and obtain OCC approval.

(c) *Scope.* This section describes procedures and standards relating to a transaction resulting in a change in a national bank's permanent capital.

(d) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to changes in a national bank's permanent capital.

(e) *Definitions.* For the purposes of this section the following definitions apply:

(1) *Capital plan* means a plan describing the manner and schedule by which a national bank will attain specified capital levels or ratios and a capital restoration plan filed with the OCC under 12 U.S.C. 1831o and 12 CFR 6.5.

(2) *Capital stock* means the total amount of common stock and preferred stock.

(3) *Capital surplus* means the total of:

(i) The amount paid in on capital stock in excess of the par or stated value;

(ii) Direct capital contributions representing the amounts paid in to the national bank other than for capital stock;

(iii) The amount transferred from undivided profits; and

(iv) The amount transferred from undivided profits reflecting stock dividends.

(4) *Permanent capital* means the sum of capital stock and capital surplus.

(f) *Policy.* In determining whether to approve a proposed change to a national bank's permanent capital, the OCC considers whether the change is:

(1) Consistent with law, regulation, and OCC policy thereunder;

(2) Provides an adequate capital structure; and

(3) If appropriate, complies with the bank's capital plan.

(g) *Increases in permanent capital*—(1) *Approval*—(i) *Prior approval not required.* If a national bank is not required to file an application and obtain prior approval under paragraph (g)(1)(ii) of this section, the bank need not submit an application. It must submit the notice of capital increase under paragraph (i)(3) of this section. The increase in capital is deemed approved by the OCC as of the date the increase was made, once the bank has filed the notice of capital increase and the OCC certifies the increase, as provided in paragraph (i)(3).

(ii) *Prior approval required.* A national bank must submit an application under paragraph (i)(1) of this section and obtain prior OCC approval to increase its permanent capital if the bank is:

(A) Required to receive OCC approval pursuant to letter, order, directive, written agreement or otherwise;

(B) Selling common or preferred stock for consideration other than cash; or

(C) Receiving a material noncash contribution to capital surplus. The

bank also must submit the notice of capital increase under paragraph (i)(3) of this section.

(2) *Preferred stock.* Notwithstanding paragraph (g)(1)(i) of this section, in the case of a sale of preferred stock, the national bank shall also submit provisions in the articles of association concerning preferred stock dividends, voting and conversion rights, retirement of the stock, and rights to exercise control over management to the appropriate OCC licensing office prior to the sale of the preferred stock. The provisions will be deemed approved by the OCC within 15 days of its receipt, unless the OCC notifies the applicant otherwise, including a statement of the reason for the delay.

(h) *Decreases in permanent capital.* A national bank shall submit an application and obtain prior approval under paragraph (i)(1) or (i)(2) of this section for any reduction of its permanent capital.

(i) *Procedures*—(1) *Prior approval.* A national bank proposing to make a change in its permanent capital that requires prior OCC approval under paragraphs (g) or (h) of this section shall submit an application to the appropriate OCC licensing office. The application must:

(i) Describe the type and amount of the proposed change in permanent capital and explain the reason for the change;

(ii) In the case of a reduction in capital, provide a schedule detailing the present and proposed capital structure;

(iii) In the case of a material noncash contribution to capital, provide a description of the method of valuing the contribution; and

(iv) State if the bank is subject to a capital plan with the OCC and how the proposed change would conform to a capital plan or if a capital plan is otherwise required in connection with the proposed change in permanent capital.

(2) *Expedited review.* An eligible bank's application is deemed approved by the OCC 15 days after the date the OCC receives the application described in paragraph (i)(1) of this section, unless the OCC notifies the bank prior to that date that the application is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An eligible bank seeking to decrease its capital may request OCC approval for up to four consecutive quarters. An eligible bank may decrease its capital pursuant to such a plan only if the bank maintains its eligible bank status before and after each decrease in its capital.

(3) *Notice of increase.* (i) After a bank completes an increase in capital it shall submit a notice to the appropriate OCC licensing office. The notice must be acknowledged before a notary public by the bank's president, vice president, or cashier and contain:

(A) A description of the transaction, unless already provided pursuant to paragraph (i)(1) of this section;

(B) The amount, including the par value of the stock, and effective date of the increase;

(C) A certification that the funds have been paid in, if applicable;

(D) A certified copy of the amendment to the articles of association, if required; and

(E) A statement that the bank has complied with all laws, regulations and conditions imposed by the OCC.

(ii) After it receives the notice of capital increase, the OCC issues a certification specifying the amount of the increase and the effective date (*i.e.,* the date on which the increase occurred). In the case of a capital increase for which prior approval was not required pursuant to paragraph (g)(1)(i), the increase is deemed certified by the OCC seven days after receipt of the notice if the OCC has not issued a certification prior to that date.

(4) *Notice of decrease.* A national bank that decreases its capital in accordance with paragraphs (i)(1) or (i)(2) of this section shall notify the appropriate OCC licensing office following the completion of the transaction.

(5) *Expiration of approval.* Approval expires if a national bank has not completed its change in permanent capital within one year of the date of approval.

(j) *Offers and sales of stock.* A national bank shall comply with the Securities Offering Disclosure Rules in 12 CFR part 16 for offers and sales of common and preferred stock.

(k) *Shareholder approval.* A national bank shall obtain the necessary shareholder approval required by statute for any change in its permanent capital.

§ 5.47 [Amended]

■ 28. Section 5.47 is amended in paragraph (g)(2)(ii) by redesignating footnote 2 as footnote 4.

■ 29. Section 5.48 is revised to read as follows:

§ 5.48 Voluntary liquidation of a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 93a, 181, 182, 1463, 1464, and 5412(b)(1)(B).

(b) *Licensing requirements.* A national bank or a Federal savings association considering going into voluntary liquidation shall provide preliminary notice to the OCC. The bank or savings association shall also file a notice with the OCC once a liquidation plan is definite. The bank or savings association may not begin liquidation unless the OCC has notified it that the OCC does not object to the liquidation plan.

(c) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to a voluntary liquidation. However, if the OCC concludes that the notice presents significant or novel policy, supervisory or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(d) *Standards*—(1) *In general.* In reviewing a proposed liquidation plan, the OCC will consider:

(i) The purpose of the liquidation;

(ii) Its impact on the safety and soundness of the national bank or Federal savings association; and

(iii) Its impact on the bank's or savings association's depositors, other creditors, and customers.

(2) *National banks.* For national banks, the OCC also will review liquidation plans for compliance with 12 U.S.C. 181 and 182.

(3) *Federal mutual savings associations.* For Federal mutual savings associations, the OCC also will assess the advisability of, and alternatives to, liquidation and the effect of liquidation on all concerned.

(e) *Procedure*—(1) *Preliminary notice of voluntary liquidation.* A national bank or Federal savings association that is considering going into voluntary liquidation shall provide preliminary notice to the appropriate OCC licensing office.

(2) *Submission of liquidation plan and nonobjection.* (i) After a national bank or Federal savings association provides preliminary notice under paragraph (e)(1) of this section, if the bank or savings association plans to proceed with liquidation, it shall submit a voluntary liquidation plan to the OCC. A liquidation plan may be effected in whole or part through purchase and assumption transactions.

(ii) The national bank or Federal savings association must receive the OCC's supervisory non-objection to the liquidation plan before beginning the liquidation.

(3) *Notice upon commencing liquidation*—(i) *In general.* When the board of directors and the shareholders of a solvent national bank or Federal savings association, or in the case of a Federal mutual savings association, the board of directors and the members, have voted to voluntarily liquidate, the bank or savings association shall:

(A) File a notice with the appropriate OCC licensing office; and

(B) provide notice to depositors, other known creditors, and known claimants of the bank or savings association.

(ii) *National banks.* A vote to liquidate a national bank must comply with 12 U.S.C. 181. In addition, a national bank shall publish notice in accordance with 12 U.S.C. 182.

(iii) *Federal savings associations.* A Federal savings association shall publish public notice if so directed by the OCC.

(4) *Report of condition.* The national bank's or Federal savings association's liquidating agent or committee shall submit a report to the appropriate OCC licensing office at the start of liquidation showing the bank's or savings association's balance sheet as of the start of liquidation. The liquidating national bank or Federal savings association shall submit reports of the condition of its commercial, trust, and other departments to the appropriate OCC licensing office by filing the quarterly Consolidated Reports of Condition and Income (Call Reports).

(5) *Report of progress.* The national bank's or Federal savings association's liquidating agent or committee shall submit a ''Report of Progress of Liquidation'' annually to the appropriate OCC licensing office until the liquidation is complete.

(6) *Final report.* The national bank's or Federal savings association's liquidating agent or committee shall submit a final report at the conclusion of liquidation showing that all creditors have been satisfied, remaining assets have been distributed to shareholders, resolutions to dissolve the bank or savings association have been adopted, and the bank or savings association has been dissolved. The national bank or Federal savings association also shall return its charter certificate to the OCC.

(f) *Expedited liquidations in connection with acquisitions*—(1) *In general.* When an acquiring depository institution in a business combination purchases all the assets, and assumes all the liabilities, including all contingent liabilities, of a target national bank or Federal savings association, the target national bank or Federal savings association may be dissolved immediately after the combination. However, if any liabilities will remain in the target national bank or Federal savings association, then the standard liquidation procedures apply. This paragraph (f) does not apply to dissolutions of Federal mutual savings associations, which are subject to the standard liquidation procedures.

(2) *Procedure.* After its board of directors and shareholders have voted to liquidate and the national bank or Federal savings association has notified the appropriate OCC licensing office of its plans, the bank or savings association may surrender its charter and dissolve immediately, if:

(i) The acquiring depository institution certifies to the OCC that it has purchased all the assets and assumed all the liabilities, including all contingent liabilities, of the national bank or Federal savings association in liquidation; and

(ii) The acquiring depository institution and the national bank or Federal savings association in liquidation have published notice that the bank or savings association will dissolve after the purchase and assumption to the acquiror. This notice shall be included in the notice and publication for the purchase and assumption required under the Bank Merger Act, 12 U.S.C. 1828(c).

■ 30. Section 5.50 is revised to read as follows:

§ 5.50 Change in control of a national bank or Federal savings association; reporting of stock loans.

(a) *Authority.* 12 U.S.C. 93a, 1817(j), and 1831aa.

(b) *Licensing requirements.* Any person seeking to acquire control of a national bank or Federal savings association shall provide 60 days prior written notice of a change in control to the OCC, except where otherwise provided in this section.

(c) *Scope*—(1) *In general.* This section describes the procedures and standards governing OCC review of notices for a change in control of a national bank or Federal savings association and reports of stock loans.

(2) *Exempt transactions.* The following transactions are not subject to the requirements of this section:

(i) The acquisition of additional shares of a national bank or Federal savings association by a person who:

(A) Has, continuously since March 9, 1979, (or since that institution commenced business, if later) held power to vote 25 percent or more of the voting securities of that bank or Federal savings association; or

(B) Under paragraph (f)(2)(ii) of this section, would be presumed to have controlled that bank or Federal savings association continuously since March 9, 1979, if the transaction will not result in that person's direct or indirect ownership or power to vote 25 percent or more of any class of voting securities of the national bank or Federal savings association; or, in other cases, where the OCC determines that the person has controlled the bank or savings association continuously since March 9, 1979;

(ii) Unless the OCC otherwise provides in writing, the acquisition of additional shares of a national bank or Federal savings association by a person who has lawfully acquired and maintained continuous control of the bank or Federal savings association under paragraph (f) of this section after complying with the procedures and filing the notice required by this section;

(iii) A transaction subject to approval under section 3 of the Bank Holding Company Act, 12 U.S.C. 1842, section 18(c) of Federal Deposit Insurance Act, 12 U.S.C. 1828(c), or section 10 of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1467a;

(iv) Any transaction described in section 2(a)(5) or 3(a) (A) or (B) of the Bank Holding Company Act, 12 U.S.C. 1841(a)(5) and 1842(a) (A) and (B), by a person described in those provisions;

(v) A customary one-time proxy solicitation or receipt of *pro rata* stock dividends; and

(vi) The acquisition of shares of a foreign bank that has a Federally licensed branch in the United States. This exemption does not extend to the reports and information required under paragraph (i) of this section.

(3) *Prior notice exemption.* The following transactions are not subject to the prior notice requirements of this section but are otherwise subject to this section, including filing a notice and paying the appropriate filing fee, within 90 calendar days after the transaction occurs:

(i) The acquisition of control as a result of acquisition of voting shares of a national bank or Federal savings association through testate or intestate succession;

(ii) The acquisition of control as a result of acquisition of voting shares of a national bank or Federal savings association as a bona fide gift;

(iii) The acquisition of voting shares of a national bank or Federal savings association resulting from a redemption of voting securities;

(iv) The acquisition of control of a national bank or Federal savings association as a result of actions by third parties (including the sale of securities) that are not within the control of the acquiror; and

(v) The acquisition of control as a result of the acquisition of voting shares of a national bank or Federal savings association in satisfaction of a debt previously contracted in good faith.

(A) ''Good faith'' means that a person must either make, renew, or acquire a

loan secured by voting securities of a national bank or Federal savings association in advance of any knowledge of a default or of the substantial likelihood that a default is forthcoming. A person who purchases a previously defaulted loan, or a loan for which there is a substantial likelihood of default, secured by voting securities of a national bank or Federal savings association may not rely on this paragraph (c)(3)(v) to foreclose on that loan, seize or purchase the underlying collateral, and acquire control of the national bank or Federal savings association without complying with the prior notice requirements of this section.

(B) To ensure compliance with this section, the acquiror of a defaulted loan secured by a controlling amount of a national bank's or a Federal savings association's voting securities shall file a notice prior to the time the loan is acquired unless the acquiror can demonstrate to the satisfaction of the OCC that the voting securities are not the anticipated source of repayment for the loan.

(d) *Definitions.* As used in this section:

(1) *Acquire* when used in connection with the acquisition of stock of a national bank or Federal savings association means obtaining ownership, control, power to vote, or sole power of disposition of stock, directly or indirectly or through one or more transactions or subsidiaries, through purchase, assignment, transfer, pledge, exchange, succession, or other disposition of voting stock, including:

(i) An increase in percentage ownership resulting from a redemption, repurchase, reverse stock split or a similar transaction involving other securities of the same class, and

(ii) The acquisition of stock by a group of persons and/or companies acting in concert, which shall be deemed to occur upon formation of such group.

(2) *Acting in concert* means:

(i) Knowing participation in a joint activity or parallel action towards a common goal of acquiring control whether or not pursuant to an express agreement; or

(ii) A combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise.

(3) *Company* means any corporation, partnership, trust, association, joint venture, pool, syndicate, unincorporated organization, joint-stock company or similar organization.

(4) *Control* means the power, directly or indirectly, to direct the management or policies of a national bank or Federal savings association or to vote 25 percent or more of any class of voting securities of a national bank or Federal savings association.

(5) *Controlling shareholder* means any person who directly or indirectly or acting in concert with one or more persons or companies, or together with members of his or her immediate family, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of directors.

(6) *Federal savings association* means a Federal savings association or a Federal savings bank chartered under section 5 of the HOLA.

(7) *Immediate family* includes a person's spouse, father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, children, stepchildren, grandparent, grandchildren, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and the spouse of any of the forgoing.

(8) Insured *depository institution* means an insured depository institution as defined in 12 U.S.C. 1813(c)(2).

(9) *Management official* means any president, chief executive officer, chief operating officer, vice president, director, partner, or trustee, or any other person who performs or has a representative or nominee performing similar policymaking functions, including executive officers of principal business units or divisions or subsidiaries who perform policymaking functions, for a national bank, savings association, or a company, whether or not incorporated.

(10) *Notice* means a filing by a person in accordance with paragraph (f) of this section.

(11) *Person* means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity, and includes voting trusts and voting agreements and any group of persons acting in concert.

(12) *Similar organization* for purposes of paragraph (d)(3) of this section means a combination of parties with the potential for or practical likelihood of continuing rather than temporary existence, where the parties thereto have knowingly and voluntarily associated for a common purpose pursuant to identifiable and binding relationships which govern the parties with respect to either:

(i) The transferability and voting of any stock or other indicia of participation in another entity, or

(ii) Achievement of a common or shared objective, such as to collectively manage or control another entity.

(13) *Stock* means common or preferred stock, general or limited partnership shares or interests, or similar interests.

(14) *Voting securities* means:

(i) Shares of stock, if the shares or interests, by statute, charter, or in any manner, allow the holder to vote for or select directors (or persons exercising similar functions) of the issuing national bank or Federal savings association, or to vote on or to direct the conduct of the operations or other significant policies of the issuing national bank or Federal savings association. However, preferred stock or similar interests are not voting securities if:

(A) Any voting rights associated with the shares or interests are limited solely to voting rights customarily provided by statute regarding matters that would significantly affect the rights or preference of the security or other interest. This includes the issuance of additional amounts of classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing national bank, or the payment of dividends by the issuing national bank or Federal savings association when preferred dividends are in arrears;

(B) The shares or interests are a passive investment or financing device and do not otherwise provide the holder with control over the issuing national bank or Federal savings association; and

(C) The shares or interests do not allow the holder by statute, charter, or in any manner, to select or to vote for the selection of directors (or persons exercising similar functions) of the issuing national bank or Federal savings association.

(ii) Securities, other instruments, or similar interests that are immediately convertible, at the option of the owner or holder thereof, into voting securities.

(e) *Policy*—(1) *In general.* The OCC seeks to enhance and maintain public confidence in the banking system by preventing a change in control of a national bank or Federal savings association that could have serious adverse effects on a national bank's or Federal savings association's financial stability or management resources, the interests of the bank's or Federal savings association's customers, the Deposit Insurance Fund, or competition.

(2) *Acquisitions subject to the Bank Holding Company Act.* (i) If corporations, partnerships, certain trusts, associations, and similar organizations, that are not already bank holding companies, are not required to secure prior Federal Reserve Board approval to acquire control of a bank under section 3 of the Bank Holding Company Act, 12 U.S.C. 1842, other than indirectly through the acquisition of shares of a bank holding company, they are subject to the notice requirements of this section.

(ii) Certain transactions, including foreclosures by depository institutions and other institutional lenders, fiduciary acquisitions by depository institutions, and increases of majority holdings by bank holding companies, are described in sections 2(a)(5)(D) and 3(a) (A) and (B) of the Bank Holding Company Act, 12 U.S.C. 1841(a)(5)(D) and 12 U.S.C. 1842(a) (A) and (B), but do not require the Federal Reserve Board's prior approval. For purposes of this section, they are considered subject to section 3 of the Bank Holding Company Act, 12 U.S.C. 1842, and do not require either a prior or subsequent notice to the OCC under this section.

(3) *Assessing financial condition.* In assessing the financial condition of the acquiring person, the OCC weighs any debt servicing requirements in light of the acquiring person's overall financial strength; the institution's earnings performance, asset condition, capital adequacy, and future prospects; and the likelihood of the acquiring party making unreasonable demands on the resources of the institution.

(f) *Procedures*—(1) *Exceptions to rules of general applicability.* Sections 5.8(a), 5.9, 5.10, 5.11, and 5.13(a) through (f) do not apply to filings under this section. When complying with § 5.8(b) no address is required for a notice filed by one or more individuals under this section.

(2) *Who must file.* (i) Any person seeking to acquire the power, directly or indirectly, to direct the management or policies, or to vote 25 percent or more of a class of voting securities of a national bank or Federal savings association, shall file a notice with the OCC 60 days prior to the proposed acquisition, unless the acquisition is exempt under paragraph (c)(2) of this section.

(ii) The following persons shall be presumed to be acting in concert for purposes of this section:

(A) A company and any controlling shareholder, partner, trustee or management official of such company if both the company and the person own stock in the national bank or Federal savings association;

(B) A person and the members of the person's immediate family;

(C) Companies under common control;

(D) Persons that have made, or propose to make, a joint filing under section 13 or 14 of the Securities Exchange Act of 1934, and the rules thereunder promulgated by the Securities and Exchange Commission;

(E) A person or company will be presumed to be acting in concert with any trust for which such person or company serves as trustee, except that a tax-qualified employee stock benefit plan as defined in § 192.2(a)(39) of this chapter shall not be presumed to be acting in concert with its trustee or person acting in a similar fiduciary capacity solely for the purposes of determining whether to combine the holdings of a plan and its trustee or fiduciary; and

(F) Persons that are parties to any agreement, contract, understanding, relationship, or other arrangement, whether written or otherwise, regarding the acquisition, voting or transfer of control of voting securities of a national bank or Federal savings association, other than through a revocable proxy in connection with a proxy solicitation for the purposes of conducting business at a regular or special meeting of the institution, if the proxy terminates within a reasonable period after the meeting.

(iii) The OCC presumes, unless rebutted, that an acquisition or other disposition of voting securities through which any person proposes to acquire ownership of, or the power to vote, 10 percent or more of a class of voting securities of a national bank or Federal savings association is an acquisition by a person of the power to direct the bank's or savings association's management or policies if:

(A) The securities to be acquired or voted are subject to the registration requirements of section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l; or

(B) Immediately after the transaction no other person will own or have the power to vote a greater proportion of that class of voting securities.

(iv) The OCC will consider a rebuttal of the presumption of control where the person or company intends to have no more than one representative on the board of directors of the national bank or Federal savings association.

(v) The presumption of control may not be rebutted if the total equity investment by the person or company in the national bank or Federal savings association, including 15 percent or more of any class of voting securities, equals or exceeds one third of the total equity of the national bank or Federal savings association.

(vi) Other transactions resulting in a person's control of less than 25 percent of a class of voting securities of a national bank or Federal savings association are not deemed by the OCC to result in control for purposes of this section.

(vii) If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of a national bank's or Federal savings association's voting securities, and either the acquisitions are of a class of securities subject to the registration requirements of section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l, or immediately after the transaction no other shareholder of the national bank or Federal savings association would own or have the power to vote a greater percentage of the class, each of the acquiring persons shall either file a notice or rebut the presumption of control.

(viii) An acquiring person may seek to rebut a presumption established in paragraph (f)(2)(ii) or (iii) of this section by presenting relevant information in writing to the appropriate OCC licensing office. The OCC shall respond in writing to any person that seeks to rebut the presumption of control or the presumption of concerted action. No rebuttal filing is effective unless the OCC indicates in writing that the information submitted has been found to be sufficient to rebut the presumption of control.

(3) *Filings.* (i) The OCC does not accept a notice of a change in control unless it is technically complete, *i.e.,* the information provided is responsive to every item listed in the notice form and is accompanied by the appropriate fee.

(A) The notice must contain the information required under 12 U.S.C. 1817(j)(6)(A), and the information prescribed in the Interagency Biographical and Financial Report. This form is available on the OCC's Internet Web page, *www.occ.gov.* The OCC may waive any of the informational requirements of the notice if the OCC determines that it is in the public interest.

(B) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied with a current statement of assets and liabilities and an income summary, together with a statement of

any material changes since the date of the statement or summary. However, the OCC may require additional information, if appropriate.

(ii) The OCC has 60 days from the date it declares the notice to be technically complete to review the notice.

(A) When the OCC declares a notice technically complete, the appropriate OCC licensing office sends a letter of acknowledgment to the applicant indicating the technically complete date.

(B) As set forth in paragraph (g) of this section, the applicant shall publish an announcement within 10 days of filing the notice with the OCC. The publication of the announcement triggers a 20-day public comment period. The OCC may waive or shorten the public comment period if an emergency exists. The OCC also may shorten the comment period for other good cause. The OCC may act on a proposed change in control prior to the expiration of the public comment period if the OCC makes a written determination that an emergency exists.

(C) An applicant shall notify the OCC immediately of any material changes in a notice submitted to the OCC, including changes in financial or other conditions that may affect the OCC's decision on the filing.

(iii) Within the 60-day period, the OCC may inform the applicant that the acquisition has been disapproved, has not been disapproved, or that the OCC will extend the 60-day review period for up to an additional 30 days. The period or the OCC's review of a notice may be further extended not to exceed two additional times for not more than 45 days each time if:

(A) The OCC determines that any acquiring party has not furnished all the information required under this part;

(B) In the OCC's judgment, any material information submitted is substantially inaccurate;

(C) The OCC has been unable to complete an investigation of each acquirer because of any delay caused by, or the inadequate cooperation of, such acquirer; or

(D) The OCC determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31 of the United States Code.

(iv) The applicant may request a hearing by the OCC within 10 days of receipt of a disapproval (*see* 12 CFR part 19, subpart H, for hearing initiation procedures). Following final agency action under 12 CFR part 19, further review by the courts is available. (*See* 12 U.S.C. 1817(j)(5).)

(4) *Conditional actions.* The OCC may impose conditions on its action not to disapprove a notice to assure satisfaction of the relevant statutory criteria for non-objection to a notice.

(5) *Disapproval of notice.* The OCC may disapprove a notice if it finds that any of the following factors exist:

(i) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(ii) The effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(iii) Either the financial condition of any acquiring person or the future prospects of the institution is such as might jeopardize the financial stability of the bank or Federal savings association or prejudice the interests of the depositors of the bank or Federal savings association;

(iv) The competence, experience, or integrity of any acquiring person, or of any of the proposed management personnel, indicates that it would not be in the interest of the depositors of the bank or Federal savings association, or in the interest of the public, to permit that person to control the bank or Federal savings association;

(v) An acquiring person neglects, fails, or refuses to furnish the OCC all the information it requires; or

(vi) The OCC determines that the proposed transaction would result in an adverse effect on the Deposit Insurance Fund.

(6) *Disapproval notification.* If the OCC disapproves a notice, it will notify the proposed acquiring person in writing within three days after the decision containing a statement of the basis for disapproval.

(g) *Disclosure*—(1) *Announcement.* The applicant shall publish an announcement in a newspaper of general circulation in the community where the affected national bank or Federal savings association is located within 10 days of filing. The OCC may authorize a delayed announcement if an immediate announcement would not be in the public interest.

(i) In addition to the information required by § 5.8(b), the announcement must include the name of the national bank or Federal savings association named in the notice and the comment period (*i.e.,* 20 days from the date of the announcement). The announcement also must state that the public portion of the notice is available upon request.

(ii) Notwithstanding any other provisions of this paragraph (g), if the OCC determines in writing that an emergency exists and that the announcement requirements of this paragraph (g) would seriously threaten the safety and soundness of the national bank or Federal savings association to be acquired, including situations where the OCC must act immediately in order to prevent the probable failure of a national bank or Federal savings association, the OCC may waive or shorten the publication requirement.

(2) *Release of information.* (i) Upon the request of any person, the OCC releases the information provided in the public portion of the notice and makes it available for public inspection and copying as soon as possible after a notice has been filed. In certain circumstances the OCC may determine that the release of the information would not be in the public interest. In addition, the OCC makes a public announcement of a technically complete notice, the disposition of the notice, and the consummation date of the transaction, if applicable, in the OCC's ''Weekly Bulletin.''

(ii) The OCC handles requests for the non-public portion of the notice as requests under the Freedom of Information Act, 5 U.S.C. 552, and other applicable law.

(h) *Reporting requirement.* After the consummation of the change in control, the national bank or Federal savings association shall notify the OCC in writing of any changes or replacements of its chief executive officer or of any director occurring during the 12-month period beginning on the date of consummation. This notice must be filed within 10 days of such change or replacement and must include a statement of the past and current business and professional affiliations of the new chief executive officers or directors.

(i) *Reporting of stock loans*—(1) *Requirements.* (i) Any foreign bank, or any affiliate thereof, shall file a consolidated report with the appropriate OCC supervisory office of the national bank or Federal savings association if the foreign bank or any affiliate thereof, has credit outstanding to any person or

group of persons that, in the aggregate, is secured, directly or indirectly, by 25 percent or more of any class of voting securities of the same national bank or Federal savings association.

(ii) The foreign bank, or any affiliate thereof, shall also file a copy of the report with its appropriate OCC supervisory office if that office is different from the national bank's or Federal savings association's appropriate OCC supervisory office. If the foreign bank, or any affiliate thereof, is not supervised by the OCC, it shall file a copy of the report filed with the OCC with its appropriate Federal banking agency.

(iii) Any shares of the national bank or Federal savings association held by the foreign bank, or any affiliate thereof, as principal must be included in the calculation of the number of shares in which the foreign bank or any affiliate thereof has a security interest for purposes of paragraph (h)(1)(i) of this section.

(2) *Definitions.* For purposes of this paragraph (i):

(i) *Foreign bank and affiliate* have the same meanings as in section 1 of the International Banking Act of 1978, 12 U.S.C. 3101.

(ii) *Credit outstanding* includes any loan or extension of credit; the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit; and any other type of transaction that extends credit or financing to a person or group of persons.

(iii) *Group of persons* includes any number of persons that a foreign bank, or an affiliate thereof, has reason to believe:

(A) Are acting together, in concert, or with one another to acquire or control shares of the same insured national bank or Federal savings association, including an acquisition of shares of the same national bank or Federal savings association at approximately the same time under substantially the same terms; or

(B) Have made, or propose to make, a joint filing under 15 U.S.C. 78m regarding ownership of the shares of the same depository institution.

(3) *Exceptions.* Compliance with paragraph (i)(1) of this section is not required if:

(i) The person or group of persons referred to in paragraph (h)(1) of this section has disclosed the amount borrowed and the security interest therein to the appropriate OCC licensing office in connection with a notice filed under this section or any other application filed with the appropriate OCC licensing office as a substitute for a notice under this section, such as for a national bank or Federal savings association charter; or

(ii) The transaction involves a person or group of persons that has been the owner or owners of record of the stock for a period of one year or more or, if the transaction involves stock issued by a newly chartered bank or Federal savings association, before the bank's or Federal savings association's opening.

(4) *Report requirements.* (i) The consolidated report must indicate the number and percentage of shares securing each applicable extension of credit, the identity of the borrower, and the number of shares held as principal by the foreign bank and any affiliate thereof.

(ii) The foreign bank and all affiliates thereof shall file the consolidated report in writing within 30 days of the date on which the foreign bank or affiliate thereof first believes that the security for any outstanding credit consists of 25 percent or more of any class of voting securities of a national bank or Federal savings association.

(5) *Other reporting requirements.* A foreign bank or any affiliate thereof, supervised by the OCC and required to report credit outstanding secured by the shares of a depository institution to another Federal banking agency also shall file a copy of the report with its appropriate OCC supervisory office.

■ 31. Section 5.51 is revised to read as follows:

§ 5.51 Changes in directors and senior executive officers of a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 1831i and 12 U.S.C. 5412(b)(2)(B).

(b) *Scope.* This section describes the circumstances when a national bank or a Federal savings association must notify the OCC of a change in its directors and senior executive officers, and the OCC's authority to disapprove those notices.

(c) *Definitions*—(1) *Director* means an individual who serves on the board of directors of a national bank or a Federal savings association, except:

(i) A director of a foreign bank that operates a Federal branch; and

(ii) An advisory director who does not have the authority to vote on matters before the board of directors or any committee of the board of directors and provides solely general policy advice to the board of directors or any committee.

(2) *Federal savings association* means a Federal savings association or Federal savings bank chartered under 12 U.S.C. 1464.

(3) *National bank* includes a Federal branch for purposes of this section only.

(4) *Senior executive officer* means the president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, and any other individual the OCC identifies in writing to the national bank or Federal savings association who exercises significant influence over, or participates in, major policy making decisions of the national bank or Federal savings association without regard to title, salary, or compensation. The term also includes employees of entities retained by a national bank or Federal savings association to perform such functions in lieu of directly hiring the individuals, and, with respect to a Federal branch operated by a foreign bank, the individual functioning as the chief managing official of the Federal branch.

(5) *Technically complete notice* means a notice that provides all the information requested in paragraph (e)(2) of this section, including complete explanations where material issues arise regarding the competence, experience, character, or integrity of proposed directors or senior executive officers, and any additional information that the OCC may request following a determination that the notice was not technically complete.

(6) *Technically complete notice date* means the date on which the OCC has received a technically complete notice.

(7) *Troubled condition* means a national bank or Federal savings association that

(i) Has a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System (CAMELS);

(ii) Is subject to a cease and desist order, a consent order, or a formal written agreement, unless otherwise informed in writing by the OCC; or

(iii) Is informed in writing by the OCC that, based on information pertaining to such national bank or Federal savings association, it has been designated in ''troubled condition'' for purposes of this section.

(d) *Prior notice.* A national bank or Federal savings association shall provide written notice to the OCC at least 90 calendar days before adding or replacing any member of its board of directors, employing any individual as a senior executive officer of the national bank or Federal savings association, or changing the responsibilities of any senior executive officer so that the individual would assume a different senior executive officer position, if:

(1) The national bank or Federal savings association is not in compliance with minimum capital requirements, as prescribed in 12 CFR part 3 or is otherwise in troubled condition; or

(2) The OCC determines, in writing, in connection with the review by the agency of the plan required under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o), or otherwise, that such prior notice is appropriate.

(e) *Procedures*—(1) *Filing notice.* A national bank or Federal savings association shall file a notice with its appropriate supervisory office. When a national bank or Federal savings association files a notice, the individual to whom the filing pertains shall attest to the validity of the information pertaining to that individual. The 90-day review period begins on the technically complete notice date.

(2) *Content of notice.* (i) The notice must include:

(A) The information required under 12 U.S.C. 1817(j)(6)(A), and the information prescribed in the Interagency Notice of Change in Director or Senior Executive Officer, the biographical and certification portions of the Interagency Biographical and Financial Report (''IBFR''), and unless otherwise determined by the OCC in writing, the financial portion of the IBFR. These forms are available from the OCC;

(B) Legible fingerprints of the individual, except that fingerprints are not required for any individual who, within the three years immediately preceding the initial submission date of the notice currently under review, has been the subject of a notice filed with the OCC or the OTS pursuant to 12 U.S.C. 1831i, or this section, and has previously submitted fingerprints; and

(C) Such other information required by the OCC.

(ii) *Modification of content requirements.* The OCC may require or accept other information in place of the content requirements in paragraph (e)(2)(i) of this section.

(3) *Requests for additional information.* (i) Following receipt of a technically complete notice, the OCC may request additional information. Such request must be in writing, must explain why the information is needed, and must specify a time period during which the information must be provided.

(ii) If the national bank or Federal savings association cannot provide the information requested by the OCC within the time specified in paragraph (e)(3)(i) of this section, the national bank or Federal savings association may request in writing that the OCC suspend processing of the notice. The OCC will advise the national bank or Federal savings association in writing whether the suspension request is granted and, if granted, the length of the suspension.

(iii) If the national bank or Federal savings association fails to provide the requested information within the time specified in paragraphs (e)(3)(i) or (ii) of this section, the OCC may deem the filing abandoned under § 5.13(c) or may review the notice based on the information provided.

(4) *Notice of disapproval.* The OCC may disapprove an individual proposed as a member of the board of directors or as a senior executive officer if the OCC determines on the basis of the individual's competence, experience, character, or integrity that it would not be in the best interests of the depositors of the national bank or Federal savings association or the public to permit the individual to be employed by, or associated with, the national bank or Federal savings association. The OCC must send a written notice of disapproval to both the national bank or Federal savings association and the individual stating the basis for disapproval.

(5) *Notice of intent not to disapprove.* An individual proposed as a member of the board of directors or as a senior executive officer may begin service before the expiration of the review period if the OCC notifies the individual and the national bank or Federal savings association in writing that the OCC does not disapprove the proposed director or senior executive officer and all other applicable legal requirements are satisfied.

(6) *Waiver of prior notice*—(i) *Waiver request.* (A) A national bank or Federal savings association may send a letter to the appropriate supervisory office requesting a waiver of the prior notice requirement.

(B) The OCC may grant the waiver if it issues a written finding that:

(*1*) Delay could adversely affect the safety and soundness of the national bank or Federal savings association;

(*2*) Delay would not be in the public interest; or

(*3*) Other extraordinary circumstances justify waiver of prior notice.

(C) The OCC will determine the length of the waiver on a case-by-case basis. All waivers that the OCC grants under this paragraph (e)(6) are subject to the condition that the national bank or Federal savings association shall file a technically complete notice under this section within the time period specified by the OCC.

(D) Subject to paragraph (e)(6)(i)(C) of this section, the proposed individual may assume the position on an interim basis until the earliest of the following events:

(*1*) The individual and the national bank or the Federal savings association receive a notice of intent not to disapprove, at which time the individual may assume the position on a permanent basis, provided all other applicable legal requirements are satisfied;

(*2*) The individual and the national bank or the Federal savings association receive a notice of disapproval within 90 calendar days after the submission of a technically complete notice. In this event the individual shall immediately resign from the position upon receipt of the notice of disapproval and may assume the position on a permanent basis only if the notice of disapproval is reversed on appeal and all other applicable legal requirements are satisfied; or

(*3*) The OCC does not act within 90 calendar days after the submission of a technically complete notice. In this event, the individual may assume the position on a permanent basis 91 calendar days after the submission of a technically complete notice.

(E) If the technically complete notice is not filed within the time period specified in the waiver, the proposed individual shall immediately resign his or her position. Thereafter, the individual may assume the position only after a technically complete notice has been filed, all other applicable requirements are satisfied, and:

(*1*) The national bank or the Federal savings association receives a notice of intent not to disapprove;

(*2*) The review period expires; or

(*3*) A notice of disapproval has been overturned on appeal as set forth in paragraph (f) of this section.

(F) Notwithstanding the grant of a waiver, the OCC has authority to issue a notice of disapproval within 30 days of the expiration of such waiver.

(ii) *Automatic waiver.* An individual who has been elected to the board of directors of a national bank or Federal savings association may serve as a director on an interim basis before a notice has been filed under this section, provided the individual was not nominated by management, and the national bank or Federal savings association submits a notice under this section not later than seven days after the individual has been notified of the election. The individual may serve on an interim basis until the occurrence of the earliest of the events described in paragraphs (e)(6)(i)(D)(*1*), (*2*), or (*3*) of this section.

(7) *Commencement of service.* An individual proposed as a member of the board of directors or as a senior executive officer who satisfies all other

applicable legal requirements may assume the office on a permanent basis:

(i) Prior to the expiration of the review period, only if the OCC notifies the national bank or Federal savings association in writing that the OCC does not disapprove the proposed director or senior executive officer pursuant to paragraph (e)(5) of this section; or

(ii) Following the expiration of the review period, unless:

(A) The OCC issues a written notice of disapproval during the review period; or

(B) The national bank or Federal savings association does not provide additional information within the time period required by the OCC pursuant to paragraph (e)(3) of this section and the OCC deems the notice to be abandoned pursuant to § 5.13(c).

(8) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, 5.11, and 5.13(a) through (f) do not apply to a notice for a change in directors and senior executive officers, except that § 5.13(c) shall apply to the extent provided for in paragraphs (e)(3)(iii) and (e)(7) of this section.

(f) *Appeal.* (1) If the national bank or Federal savings association, the proposed individual, or both, disagree with a disapproval, they may seek review by appealing the disapproval to the Comptroller, or an authorized delegate, within 15 days of the receipt of the notice of disapproval. The national bank or Federal savings association or the individual may appeal on the grounds that the reasons for disapproval are contrary to fact or insufficient to justify disapproval. The appellant shall submit all documents and written arguments that the appellant wishes to be considered in support of the appeal.

(2) The Comptroller, or an authorized delegate, may designate an appellate official who was not previously involved in the decision leading to the appeal at issue. The Comptroller, an authorized delegate, or the appellate official considers all information submitted with the original notice, the material before the OCC official who made the initial decision, and any information submitted by the appellant at the time of the appeal.

(3) The Comptroller, an authorized delegate, or the appellate official shall independently determine whether the reasons given for the disapproval are contrary to fact or insufficient to justify the disapproval. If either is determined to be the case, the Comptroller, an authorized delegate, or the appellate official may reverse the disapproval.

(4) Upon completion of the review, the Comptroller, an authorized delegate, or the appellate official shall notify the appellant in writing of the decision. If the original decision is reversed, the individual may assume the position in the national bank or Federal savings association for which he or she was proposed.

■ 32. Section 5.52 is revised to read as follows:

§ 5.52 Change of address of a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 93a, 161, 481, 1462a, 1463, 1464 and 5412(b)(2)(B).

(b) *Scope.* This section describes the obligation of a national bank or a Federal savings association to notify the OCC of any change in its address.

(c) *Notice process.* (1) Any national bank with a change in the address of its main office or in its post office box or a Federal savings association with a change in the address of its home office or post office box shall send a written notice to the appropriate OCC licensing office.

(2) No notice is required if the change in address results from a transaction approved under this part or if notice has been provided pursuant to § 5.40(b) with respect to the relocation of a main office or home office to a branch location in the same city, town or village.

(d) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, 5.11, and 5.13 do not apply to changes in a national bank's or Federal savings association's address.

■ 33. Section 5.53 is revised to read as follows:

§ 5.53 Substantial asset change by a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 93a, 1818, 1462a, 1463, 1464, 1467a, and 5412(b)(2)(B).

(b) *Scope.* This section requires a national bank or a Federal savings association to obtain the approval of the OCC for a substantial asset change.

(c) *Definition*—(1) *In general.* Except as provide in paragraph (c)(2) of this section, *substantial asset change* means:

(i) The sale or other disposition of all, or substantially all, of the national bank's or Federal savings association's assets in a transaction or a series of transactions;

(ii) After having sold or disposed of all, or substantially all, of its assets, subsequent purchases or other acquisitions or other expansions of the national bank's or Federal savings association's operations;

(iii) Any other purchases, acquisitions or other expansions of operations that are part of a plan to increase the size of the national bank or Federal savings association by more than 25 percent in a one year period; or

(iv) Any other material increase or decrease in the size of the national bank or Federal savings association or a material alteration in the composition of the types of assets or liabilities of the national bank or Federal savings association (including the entry or exit of business lines), on a case-by-case basis, as determined by the OCC.

(2) *Exceptions.* The term ''substantial asset change'' does not include, and this section does not apply, to a change in composition of all, or substantially all, of a bank's or savings association's assets:

(i) That the bank or savings association undertakes in response to direction from the OCC (*e.g.,* in an enforcement action pursuant to 12 U.S.C. 1818);

(ii) That is part of a voluntary liquidation under 12 CFR 5.48, if the bank or savings association in liquidation has obtained the OCC's non-objection to its plan of liquidation under 12 CFR 5.48 and has stipulated in its notice of liquidation to the OCC that its liquidation will be completed, the bank or savings association dissolved and its charter returned to the OCC within one year of the date it filed the notice of liquidation, unless the OCC extends the time period;

(iii) That occurs as a result of a bank's or savings association's ordinary and ongoing business of originating and securitizing loans; or

(iv) That are subject to OCC approval under another application to the OCC.

(d) *Procedures*—(1) *Consultation.* A national bank or Federal savings association considering a transaction or series of transactions that may constitute a material change under paragraph (c)(1)(iv) of this section must consult with the appropriate OCC supervisory office for a determination whether the OCC will require an application under this section. In determining whether to require an application, the OCC considers the size and nature of the transaction and the condition of the institutions involved.

(2) *Approval requirement.* A national bank or Federal savings association must file an application and obtain the prior written approval of the OCC before engaging in a substantial asset change.

(3) *Factors*—(i) *In general.* (A) In determining whether to approve an application under paragraph (d)(1) of this section, the OCC considers the following factors:

(*1*) The capital level of any resulting national bank or Federal savings association;

(*2*) The conformity of the transaction to applicable law, regulation, and supervisory policies;

(*3*) The purpose of the transaction;

(*4*) The impact of the transaction on safety and soundness of the national bank or Federal savings association; and

(*5*) The effect of the transaction on the national bank or Federal savings association's shareholders, depositors, other creditors, and customers.

(B) The OCC may deny the application if the transaction would have a negative effect in any of these respects.

(ii) *Additional factors.* The OCC's review of any substantial asset change that involves the purchase or other acquisition or other expansions of the bank's or savings association's operations will include, in addition to the foregoing factors, the factors governing the organization of a bank or savings association under § 5.20.

(e) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply with respect to applications filed pursuant to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all of the provisions of §§ 5.8, 5.10, and 5.11 apply.

■ 34. Section 5.55 is added to subpart D to read as follows:

§ 5.55 Capital distributions by Federal savings associations.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, 1467a, 1831o, and 5412(b)(2)(B).

(b) *Licensing requirements.* A Federal savings association must file an application or notice before making a capital distribution, as provided in this section.

(c) *Scope.* This section applies to all capital distributions by a Federal savings association and sets forth the procedures and standards relating to a capital distribution.

(d) *Definitions.* The following definitions apply to this section:

(1) *Affiliate* means an affiliate, as defined under regulations of the Board of Governors of the Federal Reserve System regarding transactions with affiliates, 12 CFR part 223 (Regulation W).

(2) *Capital* means total capital, as computed under 12 CFR part 3.

(3) *Capital distribution* means:

(i) A distribution of cash or other property to owners of a Federal savings association made on account of their ownership, but excludes:

(A) Any dividend consisting only of the shares of the savings association or rights to purchase the shares; or

(B) If the savings association is a Federal mutual savings association, any payment that the savings association is required to make under the terms of a deposit instrument and any other amount paid on deposits that the OCC determines is not a distribution for the purposes of this section;

(ii) A Federal savings association's payment to repurchase, redeem, retire or otherwise acquire any of its shares or other ownership interests; any payment to repurchase, redeem, retire, or otherwise acquire debt instruments included in its total capital under 12 CFR part 3; and any extension of credit to finance an affiliate's acquisition of the savings association's shares or interests;

(iii) Any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring. This includes the Federal savings association's payment of cash or property to shareholders of another association or to shareholders of its holding company to acquire ownership in that association, other than by a distribution of shares;

(iv) Any other distribution charged against a Federal savings association's capital accounts if the savings association would not be well capitalized, as set forth in 12 CFR 6.4, following the distribution; and

(v) Any transaction that the OCC determines, by order or regulation, to be in substance a distribution of capital.

(4) *Net income* means a Federal savings association's net income computed in accordance with generally accepted accounting principles (GAAP).

(5) *Retained net income* means a Federal savings association's net income for a specified period less total capital distributions declared in that period.

(6) *Shares* means common and preferred stock, and any options, warrants, or other rights for the acquisition of such stock. The term ''share'' also includes convertible securities upon their conversion into common or preferred stock. The term does not include convertible debt securities prior to their conversion into common or preferred stock or other securities that are not equity securities at the time of a capital distribution.

(e) *Filing requirements*—(1) *Application required.* A Federal savings association must file an application with the OCC if:

(i) The savings association is not an eligible savings association;

(ii) The total amount of all of the savings association's capital distributions (including the proposed capital distribution) for the applicable calendar year exceeds its net income for that year to date plus retained net income for the preceding two years;

(iii) The savings association would not be at least adequately capitalized, as set forth in 12 CFR 6.4, following the distribution; or

(iv) The savings association's proposed capital distribution would violate a prohibition contained in any applicable statute, regulation, or agreement between the savings association and the OCC or the OTS, or violate a condition imposed on the savings association in an application or notice approved by the OCC or the OTS.

(2) *Notice required.* Unless it is required to file an application under paragraph (e)(1) of this section, a Federal savings association that is an eligible savings association must file a notice with the OCC if:

(i) The savings association would not remain well capitalized, as set forth under 12 CFR 6.4, or would otherwise not remain an eligible savings association following the distribution;

(ii) The savings association's proposed capital distribution would reduce the amount of or retire any part of its common or preferred stock or retire any part of debt instruments such as notes or debentures included in capital under 12 CFR part 3 (other than regular payments required under a debt instrument approved under § 5.56);

(iii) The savings association's proposed capital distribution is payable in property other than cash;

(iv) The savings association is a direct or indirect subsidiary of a mutual savings and loan holding company; or

(v) The savings association is a direct or indirect subsidiary of a company that is not a savings and loan holding company.

(3) *No prior notice required.* A Federal savings association does not need to file a notice or an application with the OCC before making a capital distribution if the Federal savings association is not required to file an application under paragraph (e)(1) or a notice under paragraph (e)(2) of this section.

(4) *Informational copy of notice required.* If the Federal savings association is a subsidiary of a savings and loan holding company that is filing a notice with the Board of Governors of the Federal Reserve System (Board) for a dividend solely under 12 U.S.C. 1467a(f) and not also under 12 U.S.C. 1467a(o)(11), and neither an application under paragraph (e)(1) nor a notice under paragraph (e)(2) of this section is required, then the savings association must provide an informational copy to the OCC of the notice filed with the Board, at the same time the notice is filed with the Board.

(f) *Filing format*—(1) *Contents.* The notice or application must:

(i) Be in narrative form;

(ii) Include all relevant information concerning the proposed capital distribution, including the amount, timing, and type of distribution; and

(iii) Demonstrate compliance with paragraph (h) of this section.

(2) *Schedules.* The notice or application may include a schedule proposing capital distributions over a specified period, not to exceed 12 months.

(3) *Combined filings.* A Federal savings association may combine the notice or application required under paragraph (e) of this section with any other notice or application, if the capital distribution is a part of, or is proposed in connection with, another transaction requiring a notice or application under this chapter. If submitting a combined filing, the Federal savings association must state that the related notice or application is intended to serve as a notice or application under this section.

(g) *Filing procedures*—(1) *Application.* When a Federal savings association is required to file an application under paragraph (e)(1) of this section, it must file the application at least 30 days before the proposed declaration of dividend or approval of the proposed capital distribution by its board of directors. The Federal savings association shall not effect the proposed declaration of dividend or approval of the proposed capital distribution unless it has received prior written approval of the OCC.

(2) *Prior notice with expedited review.* A Federal savings association that is an eligible savings association and that is required to file a notice under paragraph (e)(2) must file the notice at least 30 days before the proposed declaration of dividend or approval of the proposed capital distribution by its board of directors. The notice is deemed approved by the OCC upon the expiration of 30 days after the filing date of the notice unless, before the expiration of that time period, the OCC notifies the Federal savings association that:

(i) Additional information is required to supplement the notice;

(ii) The notice is not eligible for expedited review, or the expedited reviewed process is extended, under 5.13(a)(2); or

(iii) The notice is disapproved.

(h) *OCC review of capital distributions.* The OCC reviews applications and notices submitted pursuant to paragraphs (g)(1) and (g)(2) of this section. The OCC may disapprove the notice or deny the application in whole or in part, if it makes any of the following determinations:

(1) The Federal savings association will be undercapitalized, significantly undercapitalized, or critically undercapitalized as set forth in 12 CFR 6.4, as applicable, following the capital distribution. If so, the OCC will determine if the capital distribution is permitted under 12 U.S.C. 1831o(d)(1)(B).

(2) The proposed capital distribution raises safety or soundness concerns.

(3) The proposed capital distribution violates a prohibition contained in any statute, regulation, agreement between the Federal savings association and the OCC or the OTS, or a condition imposed on the Federal savings association in an application or notice approved by the OCC or the OTS. If so, the OCC will determine whether it may permit the capital distribution notwithstanding the prohibition or condition.

(i) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to capital distributions made by Federal savings associations.

■ 35. Section 5.56 is added to subpart D to read as follows:

§ 5.56 Inclusion of subordinated debt securities and mandatorily redeemable preferred stock as Federal savings association supplementary (tier 2) capital.

(a) *Scope and definitions.* (1) A Federal savings association must comply with this section in order to include subordinated debt securities or mandatorily redeemable preferred stock (''covered securities'') in tier 2 capital under 12 CFR 3.20(d) and to prepay covered securities included in tier 2 capital. A savings association that does not include covered securities in tier 2 capital is not required to comply with this section. Covered securities not included in tier 2 capital are subject to the requirements of § 163.80 of this chapter.

(2) For purposes of this section, mandatorily redeemable preferred stock means mandatorily redeemable preferred stock that was issued before July 23, 1985 or issued pursuant to regulations and memoranda of the Federal Home Loan Bank Board and approved in writing by the Federal Savings and Loan Insurance Corporation for inclusion as regulatory capital before or after issuance.

(b) *Application and notice procedures*—(1) *Application or notice to include covered securities in tier 2 capital*—(i) *Application.* Unless a Federal savings association is an eligible savings association filing a notice under paragraph (b)(1)(ii) of this section, it must file an application seeking the OCC's approval of the inclusion of covered securities in tier 2 capital. The savings association may file its application before or after it issues covered securities, but may not include covered securities in tier 2 capital until the OCC approves the application.

(ii) *Notice with expedited review.* An eligible savings association must file a notice seeking the OCC's approval of the inclusion of covered securities in tier 2 capital. The savings association may file its notice before or after it issues covered securities, but may not include covered securities in tier 2 capital until the OCC approves the notice. The OCC is deemed to have approved the notice upon the expiration of 30 days after the filing date of the notice unless, before the expiration of that time period, the OCC notifies the Federal savings association that

(A) Additional information is required to supplement the notice;

(B) The notice is not eligible for expedited review, or the expedited reviewed process is extended, under § 5.13(a)(2); or

(C) The OCC denies the notice.

(iii) *Securities offering rules.* A savings association also must comply with the securities offering rules at 12 CFR part 197 by filing an offering circular for a proposed issuance of covered securities, unless the offering qualifies for an exemption under that part.

(2) *Application required to prepay covered securities included in tier 2 capital*—(i) *In general.* A Federal savings association must file an application to, and receive prior approval from, the OCC before prepaying covered securities included in tier 2 capital. For purposes of this requirement, prepayment includes acceleration of a covered security, repurchase of a covered security, redemption of a covered security prior to maturity, and exercising a call option in connection with a covered security.

(ii) *Prepayment in the form of a call option.* (A) If the prepayment will be in the form of a call option, the application must include:

(*1*) A statement explaining why the Federal savings association believes that following the proposed prepayment the savings association would continue to hold an amount of capital commensurate with its risk; or

(*2*) A description of the replacement capital instrument that meets the criteria for tier 1 or tier 2 capital under 12 CFR 3.20, including the amount of such instrument, and the time frame for issuance.

(B) Notwithstanding paragraph (b)(1)(ii) of this section, if the OCC conditions approval of prepayment in the form of a call option on a requirement that a Federal savings association must replace the covered security with a covered security of an equivalent amount that satisfies the requirements for a tier 1 or tier 2 instrument, the savings association must file an application to issue the replacement covered security and must receive prior OCC approval.

(c) *General requirements.* A covered security issued under this section must satisfy the requirements for tier 2 capital in 12 CFR 3.20(d).

(d) *Securities requirements for inclusion in tier 2 capital.* To be included in tier 2 capital, covered securities must satisfy the requirements in 12 CFR 3.20(d). In addition, such covered securities must meet the following requirements:

(1) *Form.* (i) Each certificate evidencing a covered security must:

(A) Bear the following legend on its face, in bold type: ''This security is *not* a savings account or deposit and it is *not* insured by the United States or any agency or fund of the United States;''

(B) State that the security is subordinated on liquidation, as to principal, interest, and premium, to all claims against the savings association that have the same priority as savings accounts or a higher priority;

(C) State that the security is not secured by the savings association's assets or the assets of any affiliate of the savings association. An affiliate means any person or company that controls, is controlled by, or is under common control with the savings association;

(D) State that the security is not eligible collateral for a loan by the savings association;

(E) State the prohibition on the payment of dividends or interest at 12 U.S.C. 1828(b) and, in the case of subordinated debt securities, state the prohibition on the payment of principal and interest at 12 U.S.C. 1831o(h), 12 CFR 3.11, and any other relevant restrictions;

(F) For subordinated debt securities, state or refer to a document stating the terms under which the savings association may prepay the obligation; and

(G) Where applicable, state or refer to a document stating that the savings association must obtain OCC's prior approval before the acceleration of payment of principal or interest on subordinated debt securities, redemption of subordinated debt securities prior to maturity, repurchase of subordinated debt securities, or exercising a call option in connection with a subordinated debt security.

(ii) A Federal savings association must include such additional statements as the OCC may prescribe for certificates, purchase agreements, indentures, and other related documents.

(2) *Indenture.* (i) Except as provided in paragraph (d)(2)(ii) of this section, a Federal savings association must use an indenture for subordinated debt securities. If the aggregate amount of subordinated debt securities publicly offered (excluding sales in a non-public offering as defined in 12 CFR 197.4) and sold in any consecutive 12-month or 36-month period exceeds $5,000,000 or $10,000,000 respectively (or such lesser amount that the Securities and Exchange Commission shall establish by rule or regulation under 15 U.S.C. 77ddd), the indenture must provide for the appointment of a trustee other than the savings association or an affiliate of the savings association (as defined in paragraph (d)(1)(i)(C) of this section) and for collective enforcement of the security holders' rights and remedies.

(ii) A Federal savings association is not required to use an indenture if the subordinated debt securities are sold only to accredited investors, as that term is defined in 15 U.S.C. 77d(6). A savings association must have an indenture that meets the requirements of paragraph (d)(2)(i) of this section in place before any debt securities for which an exemption from the indenture requirement is claimed, are transferred to any non-accredited investor. If a savings association relies on this exemption from the indenture requirement, it must place a legend on the debt securities indicating that an indenture must be in place before the debt securities are transferred to any non-accredited investor.

(e) *Review by the OCC.* (1) In reviewing notices and applications under this section, the OCC will consider whether:

(i) The issuance of the covered securities is authorized under applicable laws and regulations and is consistent with the savings association's charter and bylaws;

(ii) The savings association is at least adequately capitalized under 12 CFR 6.4 and meets the regulatory capital requirements at 12 CFR 3.10;

(iii) The savings association is or will be able to service the covered securities;

(iv) The covered securities are consistent with the requirements of this section;

(v) The covered securities and related transactions sufficiently transfer risk from the Deposit Insurance Fund; and

(vi) The OCC has no objection to the issuance based on the savings association's overall policies, condition, and operations.

(2) The OCC's approval is conditioned upon no material changes to the information disclosed in the application or notice submitted to the OCC. The OCC may impose such additional requirements or conditions as it may deem necessary to protect purchasers, the savings association, the OCC, or the Deposit Insurance Fund.

(f) *Amendments.* If a Federal savings association amends the covered securities or related documents following the completion of the OCC's review, it must obtain the OCC's approval under this section before it may include the amended securities in tier 2 capital.

(g) *Sale of covered securities.* The Federal savings association must complete the sale of covered securities within one year after the OCC's approval under this section. A savings association may request an extension of the offering period by filing a written request with the OCC. The savings association must demonstrate good cause for the extension and file the request at least 30 days before the expiration of the offering period or any extension of the offering period.

(h) *Issuance of a replacement regulatory capital instrument in connection with exercising a call option.* Pursuant to 12 CFR 3.20(d)(1)(v)(C), the OCC may require a Federal savings association seeking prior approval to exercise a call option in connection with a covered security included in tier 2 capital to issue a replacement covered security of an equivalent amount that qualifies as tier 1 or tier 2 capital under 12 CFR 3.20. If the OCC imposes such a requirement, the savings association must complete the sale of such covered prior to, or immediately after, the prepayment.[5]

(i) *Reports.* A Federal savings association must file the following information with the OCC within 30 days after the savings association completes the sale of covered securities includable as tier 2 capital. If the savings association filed its application or notice following the completion of the sale, it must submit this information with its application or notice:

(1) A written report indicating the number of purchasers, the total dollar amount of securities sold, the net proceeds received by the savings association from the issuance, and the

[5] A Federal savings association may replace tier 2 capital instruments concurrent with the redemption of existing tier 2 capital instruments.

amount of covered securities, net of all expenses, to be included as tier 2 capital;

(2) Three copies of an executed form of the securities and a copy of any related documents governing the issuance or administration of the securities; and

(3) A certification by the appropriate executive officer indicating that the savings association complied with all applicable laws and regulations in connection with the offering, issuance, and sale of the securities.

■ 36. Section 5.58 is added to subpart D to read as follows:

§ 5.58 Pass-through investments by a Federal savings association.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, 1828, 5412(b)(2)(B).

(b) *Scope.* Federal savings associations are permitted to make various types of equity investments pursuant to 12 U.S.C. 1464 and other statutes, including pass-through investments authorized under 12 CFR 160.32(a). These investments are in addition to those subject to §§ 5.35, 5.37, 5.38, and 5.59. This section describes the procedure governing the filing of the application or notice that the OCC requires in connection with certain of these investments. The OCC may review other permissible equity investments on a case-by-case basis.

(c) *Licensing requirements.* A Federal savings association must file a notice or application as prescribed in this section to make a pass-through investment authorized under 12 CFR 160.32(a).

(d) *Definitions.* For purposes of this section:

(1) *Enterprise* means any corporation, limited liability company, partnership, trust, or similar business entity.

(2) *Well capitalized* means the capital level described in 12 CFR 6.4.

(3) *Well managed* has the meaning set forth in § 5.38(d)(2) for Federal savings associations.

(e) *Pass-through investments; notice procedure.* A Federal savings association may make a pass-through investment, directly or through its operating subsidiary, in an enterprise that engages in the activities described in paragraph (e)(2) of this section by filing a written notice. The Federal savings association must file this written notice with the appropriate OCC licensing office no later than 10 days after making the investment. The written notice must:

(1) Describe the structure of the investment and the activity or activities conducted by the enterprise in which the Federal savings association is investing. To the extent the notice relates to the initial affiliation of the Federal savings association with a company engaged in insurance activities, the savings association should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The Federal savings association must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

(2) State:

(i) Which paragraphs of § 5.38(e)(5)(v) describe the activity; or

(ii) State that, and describe how, the activity is substantively the same as that contained in published OCC precedent for Federal savings associations, including published former OTS precedent, approving a pass-through investment by a Federal savings association or its operating subsidiary, state that the activity will be conducted in accordance with the same terms and conditions applicable to the activity covered by the precedent, and provide the citation to the applicable precedent;

(3) Certify that the Federal savings association is well managed and well capitalized at the time of the investment;

(4) Describe how the Federal savings association has the ability to prevent the enterprise from engaging in an activity that is not set forth in § 5.38(e)(5)(v) or not contained in published OCC precedent for Federal savings associations, including published former OTS precedent, approving a pass-through investment by a Federal savings association or its operating subsidiary, or how the savings association otherwise has the ability to withdraw its investment;

(5) Describe how the investment is convenient and useful to the Federal savings association in carrying out its business and not a mere passive investment unrelated to the savings association's banking business;

(6) Certify that the Federal savings association's loss exposure is limited as a legal matter and that the savings association does not have unlimited liability for the obligations of the enterprise; and

(7) Certify that the enterprise in which the Federal savings association is investing agrees to be subject to OCC supervision and examination, subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(f) *Pass-through investments; application procedure*—(1) *Investments not qualifying for notice procedure.* A Federal savings association must file an application and obtain prior approval before making or acquiring, either directly or through an operating subsidiary, a pass-through investment in an enterprise if the pass-through investment does not qualify for the notice procedure set forth in paragraph (e) of this section because the savings association is unable to make the representation required by paragraph (e)(2) or the certification required by paragraph (e)(3) of this section. The application must include the information required in paragraphs (e)(1) and (e)(4) through (e)(7) of this section and paragraphs (e)(2) or (e)(3) of this section, as appropriate. If the Federal savings association is unable to make the representation set forth in paragraph (e)(2) of this section, the savings association's application must explain why the activity in which the enterprise engages is a permissible activity for a Federal savings association and why the applicant should be permitted to hold a pass-through investment in an enterprise engaged in that activity. A Federal savings association may not make a pass-through investment if it is unable to make the representations and certifications specified in paragraphs (e)(1) and (e)(4) through (e)(7) of this section.

(2) *Investments requiring a filing under 12 U.S.C. 1828(m).* Notwithstanding any other provision in this section, if an enterprise in which a Federal savings association proposes to invest would be a subsidiary of the Federal savings association for purposes of 12 U.S.C. 1828(m) and the enterprise would not be an operating subsidiary or a service corporation, the Federal savings association must file an application with the OCC under this paragraph (f)(2) at least 30 days prior to making the investment and obtain prior approval from the OCC before making the investment. The application must include the information required in paragraphs (e)(1) and (e)(4) through (e)(7) of this section and paragraphs (e)(2) or (e)(3) of this section, if applicable. If the Federal savings association is unable to make the representation set forth in paragraph (e)(2) of this section, the savings association's application must explain why the activity in which the enterprise engages is a permissible activity for a Federal savings association and why the applicant should be permitted to hold a pass-through investment in an

enterprise engaged in that activity. A Federal savings association may not make a pass-through investment if it is unable to make the representations and certifications specified in paragraphs (e)(1) and (e)(4) through (e)(7) of this section.

(g) *Pass-through investments in entities holding assets in satisfaction of debts previously contracted.* Certain pass-through investments may be eligible for expedited treatment where the Federal savings association's investment is in an entity holding assets in satisfaction of debts previously contracted or the savings association acquires shares of a company in satisfaction of debts previously contracted.

(1) *Notice required.* A Federal savings association that is well capitalized and well managed may acquire a pass-through investment, directly or through its operating subsidiary, in an enterprise that engages in the activities of holding and managing assets acquired by the parent savings association through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted, by filing a written notice in accordance with this paragraph (g)(1)(i). The activities of the enterprise must be conducted pursuant to the same terms and conditions as would be applicable if the activity were conducted directly by a Federal savings association. The Federal savings association must file the written notice with the appropriate OCC licensing office no later than 10 days after making the pass-through investment. This notice must include a complete description of the Federal savings association's investment in the enterprise and the activities conducted, a description of how the savings association plans to divest the pass-through investment or the underlying assets within applicable statutory time frames, and a representation and undertaking that the savings association will conduct the activities in accordance with OCC policies contained in guidance issued by the OCC regarding the activities. Any Federal savings association receiving approval under this paragraph (g)(1)(i) is deemed to have agreed that the enterprise will conduct the activity in a manner consistent with published OCC guidance.

(2) *No notice or application required.* A Federal savings association is not required to file a notice or application under this § 5.58 if it acquires a non-controlling investment in shares of a company through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted.

(h) *Additional exception to filing requirement.* A Federal savings association may make a pass-through investment without filing a notice or application to the OCC if all of the following conditions are met:

(1) The investment is in an investment company the portfolio of which consists exclusively of assets that the Federal savings association may hold directly;

(2) The Federal savings association is not investing more than 10 percent of its total capital in one company;

(3) The book value of the Federal savings association's aggregate non-controlling investments does not exceed 25 percent of its total capital after making the investment;

(4) The investment would not give Federal savings association direct or indirect control of the company; and

(5) The Federal savings association's liability is limited to the amount of its investment.

(i) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, and 5.11 of this part do not apply to filings for pass-through investments.

■ 37. Section 5.59 is added to subpart D to read as follows:

§ 5.59 Service corporations of Federal savings associations.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, 1828, 5412(b)(2)(B).

(b) *Licensing requirements.* When required by section 18(m) of the Federal Deposit Insurance Act, a Federal savings association must file an application as prescribed in this section to:

(1) Acquire or establish a service corporation; or

(2) Commence a new activity in an existing service corporation subsidiary.

(c) *Scope.* This section sets forth the OCC's requirements regarding service corporations of Federal savings associations, and sets forth procedures governing OCC review and approval of filings by Federal savings associations to establish or acquire service corporations and filings by Federal savings associations to conduct new activities in existing service corporation subsidiaries, pursuant to the authority provided in section 5(c)(4)(B) of the Home Owners' Loan Act, 12 U.S.C. 1464(c)(4)(B).

(d) *Definitions*—(1) *Control* has the meaning set forth at 12 U.S.C. 1841 and the Federal Reserve Board's regulations thereunder, at 12 CFR part 225.

(2) *GAAP-consolidated subsidiary* means a service corporation in which a Federal savings association has a direct or indirect ownership interest and whose assets are consolidated with those of the savings association for purposes of reporting under generally accepted accounting principles (GAAP).

(3) *Ownership interest* means any equity interest in a business organization, including stock, limited or general partnership interests, or shares in a limited liability company.

(4) *Service corporation* means any entity that satisfies all of the requirements for service corporations in 12 U.S.C. 1464(c)(4)(B) and this part, and that is designated by the investing Federal savings association as a service corporation pursuant to this section. A service corporation may be a first-tier service corporation of a Federal savings association or may be a lower-tier service corporation.

(5) *Service corporation subsidiary* means a service corporation of a Federal savings association that is controlled by that savings association.

(e) *Standards and requirements*—(1) *Ownership.* Only Federal or state-chartered savings associations with home offices in the state where the relevant Federal savings association has its home office may have an ownership interest in a first-tier service corporation. A Federal savings association need not have any minimum percentage ownership interest or have control of a service corporation in order to designate an entity as a service corporation.

(2) *Geographic restrictions.* A first-tier service corporation must be organized under the laws of the state where the relevant Federal savings association's home office is located.

(3) *Authorized activities.* A service corporation may engage in any of the designated permissible service corporation activities listed in paragraph (f) of this section, subject to any applicable filing requirement under paragraph (h) of this section. In addition, a Federal savings association may request OCC approval for a service corporation to engage in any other activity reasonably related to the activities of financial institutions.

(4) *Investment limitations.* A Federal savings association's investment in service corporations is subject to the limitations set forth in paragraph (g) of this section. The assets of a Federal savings association's service corporations are not subject to the investment limitations applicable to the savings association under section 5(c) of the HOLA.

(5) *Form of organization.* A service corporation may be organized as a corporation, or may be organized in any other organizational form that provides

the same protections as the corporate form of organization, including limited liability.

(6) *Qualified thrift lender test.* In accordance with 12 U.S.C. 1467a(m)(5), a Federal savings association may determine whether to consolidate the assets of a particular service corporation for purposes of calculating qualified thrift investments. If a service corporation's assets are not consolidated with the assets of the Federal savings association for that purpose, the savings association's investment in the service corporation will be considered in calculating the savings association's qualified thrift investments.

(7) *Supervisory, legal or safety or soundness considerations.* (i) Each service corporation must be well managed and operate safely and soundly. In addition, each service corporation must pursue financial policies that are safe and consistent with the purposes of savings associations. Each service corporation must maintain sufficient liquidity to ensure its safe and sound operation.

(ii) The OCC may, at any time, limit a Federal savings association's investment in a service corporation, or limit or refuse to permit any activity of a service corporation, for supervisory, legal, or safety or soundness reasons.

(8) *Separate corporate identity.* Federal savings associations and service corporations thereof must be operated in a manner that demonstrates to the public that each maintains a separate corporate existence. Each must operate so that:

(i) Their respective business transactions, accounts, and records are not intermingled;

(ii) Each observes the formalities of their separate corporate procedures;

(iii) Each is held out to the public as a separate enterprise; and

(iv) Unless the parent Federal savings association has guaranteed a loan to the service corporation, all borrowings by the service corporation indicate that the savings association is not liable.

(9) *Issuances of securities by service corporations.* A service corporation shall not state or imply that the securities it issues are covered by Federal deposit insurance. A service corporation subsidiary shall not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that the controlling Federal savings association is insolvent or has been placed into receivership. For as long as any securities are outstanding, the controlling Federal savings association must maintain all records generated through each securities issuance in the ordinary course of business, including but not limited to a copy of the prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by the OCC.

(10) *Certain pre-existing non-controlling investments.* A Federal savings association that made a non-controlling investment in a service corporation before May 18, 2015, but did not submit a filing under 12 U.S.C. 1828(m) with respect to such service corporation investment, is not required to file a service corporation application with respect to such investment pursuant to paragraph (b), provided that the Federal savings association does not acquire additional stock or similar interests in the service corporation, and the service corporation does not engage in any activities in which it was not engaged as of May 18, 2015.

(f) *Authorized service corporation activities.* Subject to the prior filing requirements set forth in paragraph (h) of this section and the provisions of paragraph (e)(3) of this section, a service corporation may engage in the following activities:

(1) *Any activity that all Federal savings associations may conduct directly.*

(2) *Business and professional services.* Service corporations may engage in the following activities only when such activities are limited to financial documents or financial clients or are generally finance-related:

(i) Accounting or internal audit;

(ii) Advertising, market research and other marketing;

(iii) Clerical;

(iv) Consulting;

(v) Courier;

(vi) Data processing;

(vii) Data storage facilities operation and related services;

(viii) Office supplies, furniture, and equipment purchasing and distribution;

(ix) Personnel benefit program development or administration;

(x) Printing and selling forms that require Magnetic Ink Character Recognition (MICR) encoding;

(xi) Relocation of personnel;

(xii) Research studies and surveys;

(xiii) Software development and systems integration; and

(xiv) Remote service unit operation, leasing, ownership or establishment.

(3) *Credit-related activities.* (i) Abstracting;

(ii) Acquiring and leasing personal property;

(iii) Appraising;

(iv) Collection agency;

(v) Credit analysis;

(vi) Check or credit card guaranty and verification;

(vii) Escrow agent or trustee (under deeds of trust, including executing and delivery of conveyances, reconveyances and transfers of title); and

(viii) Loan inspection.

(4) *Consumer services.* (i) Financial advice or consulting;

(ii) Foreign currency exchange;

(iii) Home ownership counseling;

(iv) Income tax return preparation;

(v) Postal services;

(vi) Stored value instrument sales;

(vii) Welfare benefit distribution;

(viii) Check printing and related services; and

(ix) Remote service unit operation, leasing, ownership, or establishment.

(5) *Real estate related services.* (i) Acquiring real estate for prompt development or subdivision, for construction of improvements, for resale or leasing to others for such construction, or for use as manufactured home sites, in accordance with a prudent program of property development;

(ii) Acquiring improved real estate or manufactured homes to be held for rental or resale, for remodeling, renovating or demolishing and rebuilding for resale or rental, or to be used for offices and related facilities of a stockholder of the service corporation;

(iii) Maintaining and managing real estate; and

(iv) Real estate brokerage for property owned by a savings association that owns capital stock of the service corporation, or a lower-tier service corporation in which the service corporation invests.

(6) *Securities activities, liquidity management, and coins.* (i) Execution of transactions in securities on an agency or riskless principal basis solely upon the order and for the account of customers or the provision of investment advice. The service corporation must register with the Securities and Exchange Commission and state securities regulators, as required by applicable Federal and state law and regulations;

(ii) Liquidity management;

(iii) Issuing notes, bonds, debentures, or other obligations or securities; and

(iv) Purchase or sale of coins issued by the U.S. Treasury.

(7) *Investments.* (i) Tax-exempt bonds used to finance residential real property for family units;

(ii) Tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies;

(iii) Small business investment companies and new markets venture capital companies licensed by the U.S. Small Business Administration;

(iv) Rural business investment companies licensed by the U.S. Department of Agriculture; and

(v) Investing in savings accounts of an investing thrift.

(8) *Community development investments.* Community and economic development or public welfare investments that are permissible under part 24 of this chapter.

(9) *Charitable activities.* Establishing or acquiring a corporation that is recognized by the Internal Revenue Service as organized for charitable purposes under 26 U.S.C. 501(c)(3) of the Internal Revenue Code and making a reasonable contribution to capitalize it, *provided* that the corporation engages exclusively in activities designed to promote the well-being of communities in which the owners of the service corporation operate.

(10) *Activities conducted as agent.* Activities conducted on behalf of a customer on other than an ''as principal'' basis.

(11) *Incidental activities.* Activities reasonably incident to those listed in paragraphs (f)(1) through (f)(10) of this section if the service corporation engages in those activities.

(g) *Limitations on investments in service corporations*—(1) *In general.* Under the authority of section 5(c)(4)(B) of the HOLA, a Federal savings association may invest up to 3 percent of its assets in the capital stock, obligations, and other securities of service corporations. Any investment that would cause a Federal savings association's investment in service corporations, in the aggregate, to exceed 2 percent of assets, or made while the savings association's investments in service corporations exceeds 2 percent of assets, must serve primarily community, inner city, or community and economic development or public welfare purposes consistent with § 24.6 of this chapter. A Federal savings association must designate the investments serving those purposes.

(2) *Loans.* In addition to the amounts that a Federal savings association may invest under paragraph (g)(1) of this section, and to the extent that a Federal savings association has authority under other provisions of section 5(c) of the HOLA and parts 5 and 160 of this chapter, and available capacity within any applicable investment limits, a Federal savings association may make loans to any service corporation subject to the following conditions:

(i) Loans to service corporations other than a GAAP-consolidated subsidiary are subject to the lending limits in part 32 of this chapter.

(ii) The OCC may limit the amount of loans to any service corporation where safety and soundness considerations warrant such action.

(3) *Definition.* For purposes of this paragraph, the terms ''loans'' and ''obligations'' include all loans and other debt instruments (except accounts payable incurred in the ordinary course of business and paid within 60 days) and all guarantees or take-out commitments of such loans or debt instruments.

(4) *GAAP-consolidated subsidiaries.* Both debt and equity investments in service corporations that are GAAP-consolidated subsidiaries are considered investments in subsidiaries for purposes of 12 CFR part 3.

(h) *Filing requirements*—(1) *Application.* (i) When required by section 18(m) of the Federal Deposit Insurance Act, a Federal savings association must file an application at least 30 days before:

(A) Acquiring or establishing a service corporation; or

(B) Commencing a new activity in an existing service corporation subsidiary.

(ii) The application must include a complete description of the savings association's investment in the service corporation, the proposed activities of the service corporation, the organizational structure and management of the service corporation, the relations between the savings association and the service corporation, and other information necessary to adequately describe the proposal. If the service corporation proposes to engage in insurance activities, the savings association must describe the type of insurance activity in which the service corporation proposes to engage. The savings association must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the service corporation holds a resident license or charter, as applicable. The OCC may require an applicant to submit a legal analysis if the proposal is novel, unusually complex, or raises substantial unresolved legal issues. In these cases, the OCC encourages applicants to have a prefiling meeting with the OCC. Any savings association receiving approval under this paragraph is deemed to have agreed that the service corporation will conduct the activity in a manner consistent with published OCC guidance.

(2) *Expedited review.* (i) An application to establish or acquire a service corporation, or to perform a new activity in an existing service corporation subsidiary, that meets the requirements of this paragraph is deemed approved by the OCC as of the 30th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review under 5.13(a)(2). Any savings association receiving approval under this paragraph is deemed to have agreed that the service corporation will conduct the activity in a manner consistent with published OCC guidance.

(ii) An application is eligible for expedited review if the following requirements are met:

(A) The savings association is ''well capitalized'' and ''well managed''; and

(B) The service corporation engages only in one or more of the preapproved activities listed in § 5.59(f).

(3) *OCC review and approval.* The OCC reviews a Federal savings association's application to determine whether the proposal is legally permissible and to ensure that the proposal is consistent with the requirements of this section, safe and sound banking practices and OCC policy and does not endanger the safety or soundness of the parent Federal savings association. As part of this process, the OCC may request additional information and analysis from the applicant.

(4) *Redesignation.* A Federal savings association that proposes to redesignate an operating subsidiary as a service corporation must submit a notification to the OCC at least 30 days prior to the redesignation date. The notification must include a description of how the redesignated entity will meet all of the requirements of this section, a resolution of the savings association's board of directors approving the redesignation, and the proposed effective date of the redesignation. The savings association may effect the redesignation on the proposed date unless the OCC notifies the savings association otherwise prior to that date. The OCC may require an application if the redesignation presents policy, supervisory, or legal issues.

(5) *Exception to rules of general applicability.* Sections 5.8, 5.10 and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(i) *Exercise of salvage powers through service corporations.* (1) In accordance with this section, a Federal savings association may exercise its salvage power to make a contribution or a loan

(including a guarantee of a loan made by any other person) to a service corporation (''salvage investment'') that exceeds the maximum amount otherwise permitted under law or regulation. A Federal savings association must notify the appropriate supervisory office at least 30 days before making such a salvage investment. The notification must demonstrate:

(i) The salvage investment protects the savings association's interest in the service corporation;

(ii) The salvage investment is consistent with safety and soundness; and

(iii) The savings association considered alternatives to the salvage investment and determined that such alternatives would not adequately satisfy paragraphs (i)(1)(i) and (ii) of this section.

(2) If the OCC notifies the Federal savings association within 30 days of the filing of the notification that the notification presents supervisory concerns, or raises significant issues of law or policy, the Federal savings association must apply for and receive the OCC's prior written approval before making the salvage investment.

(3) If a service corporation is a GAAP-consolidated subsidiary, the salvage investment will be considered an investment in a subsidiary for purposes of 12 CFR part 3.

(j) *Failure to comply with the requirements applicable to service corporations.* If a service corporation fails to meet any of the requirements of this section, the Federal savings association must notify the appropriate OCC licensing office. Unless the Federal savings association is otherwise advised by the OCC, if the service corporation cannot comply with the requirements of this section within 90 days of failing to meet such requirements, or otherwise resolve such failure to comply with this section, the Federal savings association must promptly dispose of its investment in the service corporation.

■ 38. The heading of subpart E of part 5 is revised to read as follows:

Subpart E—Payment of Dividends by National Banks

§ 5.64 [Amended]

■ 39. Paragraph (c)(3) of § 5.64 is amended by removing the phrase ''the appropriate district office'' and adding in its place the phrase ''the appropriate OCC supervisory office''.

PART 7—ACTIVITIES AND OPERATIONS

■ 40. The authority citation for part 7 is revised as set forth below.

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 71, 71a, 92, 92a, 93, 93a, 371, 371d, 481, 484, 1818, 1464(a), 1464(c)(4)(B), 1828(m), and 5412(b)(2)(B).

■ 41. The heading of part 7 is revised to read as set forth above.

■ 42. The heading of subpart A to part 7 is revised to read as follows:

Subpart A—National Bank and Federal Savings Association Powers

■ 43. Section 7.1000 is revised to read as follows:

§ 7.1000 National bank or Federal savings association ownership of property.

(a) *Investment in real estate necessary for the transaction of business*—(1) *In general.* A national bank or Federal savings association may invest in real estate that is necessary for the transaction of its business.

(2) *Type of real estate.* Real estate investments permissible under this section include:

(i) Premises that are owned and occupied (or to be occupied, if under construction) by the national bank or Federal savings association, or its respective branches or consolidated subsidiaries;

(ii) Real estate acquired and intended, in good faith, for use in future expansion;

(iii) Parking facilities that are used by customers or employees of the national bank or Federal savings association, or its respective branches or consolidated subsidiaries;

(iv) Residential property for the use of officers or employees of the national bank or Federal savings association who are:

(A) Located in remote areas where suitable housing at a reasonable price is not readily available; or

(B) Temporarily assigned to a foreign country, including foreign nationals temporarily assigned to the United States; and

(v) Property for the use of national bank or Federal savings association officers, employees, or customers, or for the temporary lodging of such persons in areas where suitable commercial lodging is not readily available, provided that the purchase and operation of the property qualifies as a deductible business expense for Federal tax purposes.

(3) *Permissible means of holding.* (i) A national bank or Federal savings association may acquire and hold real estate under this paragraph (a) by any reasonable and prudent means, including ownership in fee, a leasehold estate, or in an interest in a cooperative. The national bank or Federal savings association may hold this real estate directly or through one or more subsidiaries. The national bank or Federal savings association may organize a banking premises subsidiary as a corporation, partnership, or similar entity (*e.g.,* a limited liability company).

(ii) A Federal savings association also may acquire and hold banking premises through a service corporation in accordance with 12 CFR 5.59.

(b) *Fixed assets.* A national bank or Federal savings association may own fixed assets necessary for the transaction of its business, such as fixtures, furniture, and data processing equipment.

(c) *Investment in banking premises*—(1) *Investment limitation.* Twelve CFR 5.37(d)(1)(i) and (d)(3)(i) provide quantitative investment limitations that govern when OCC approval is required for a national bank or Federal savings association to invest in banking premises.

(2) *Premises approval.* (i) A national bank or Federal savings association shall seek approval from the OCC in accordance with 12 CFR 5.37(d).

(ii) A Federal savings association that invests in banking premises through a service corporation shall comply with the quantitative limitations in 12 CFR 5.37(d) and, to the extent applicable, 12 CFR 5.59.

(3) *Option to purchase.* An unexercised option to purchase banking premises or stock in a corporation holding banking premises is not an investment in banking premises. However, a national bank or Federal savings association seeking to exercise such an option must comply with the requirements in 12 CFR 5.37(d).

(d) *Future national bank or Federal savings association expansion.* A national bank or Federal savings association normally should use real estate acquired for future national bank or Federal savings association expansion within five years. After holding such real estate for one year, the national bank or Federal savings association shall state, by resolution of its board of directors or an appropriately authorized bank or savings association official or subcommittee of the board, definite plans for its use. The resolution or other official action must be available for inspection by OCC examiners.

(e) *Transition.* If, on May 18, 2015, a Federal savings association holds an investment in real estate, fixed assets, banking premises, or other real property

that complies with the legal requirements in effect prior to May 18, 2015, but would violate any provision of this section or § 5.37, the savings association may continue to hold such investment in accordance with the prior legal requirements. However, a Federal savings association that holds such an investment shall not modify, expand or improve this investment, except for routine maintenance, without the prior approval of the appropriate OCC supervisory office.

■ 44. The section heading for § 7.1003 is revised to read as follows:

§ 7.1003 Money lent by a national bank at banking offices or at facilities other than banking offices.

* * * * *

■ 45. The section heading for § 7.1004 is revised to read as follows:

§ 7.1004 Loans originating at facilities other than banking offices of a national bank.

* * * * *

■ 46. The section heading for § 7.1005 is revised to read as follows:

§ 7.1005 Credit decisions at other than banking offices of a national bank.

* * * * *

■ 47. The section heading for § 7.1006 is revised to read as follows:

§ 7.1006 Loan agreement providing for a national bank share in profits, income, or earnings or for stock warrants.

* * * * *

■ 48. The section heading for § 7.1007 is revised to read as follows:

§ 7.1007 National Bank Acceptances.

* * * * *

■ 49. The section heading for § 7.1008 is revised to read as follows:

§ 7.1008 Preparation by a national bank of income tax returns for customers or public.

* * * * *

■ 50. The section heading for § 7.1012 is revised to read as follows:

§ 7.1012 Establishment, operation, or use of a messenger service by a national bank.

* * * * *

■ 51. The section heading for § 7.1014 is revised to read as follows:

§ 7.1014 Sale of money orders at nonbanking outlets by a national bank.

* * * * *

■ 52. The section heading for § 7.1015 is revised to read as follows:

§ 7.1015 National bank receipt of stock from a small business investment company.

* * * * *

■ 53. The section heading for § 7.1016 is revised to read as follows:

§ 7.1016 Independent undertakings issued by a national bank to pay against documents.

* * * * *

■ 54. The section heading for § 7.1018 is revised to read as follows:

§ 7.1018 National bank automatic payment plan accounts.

* * * * *

■ 55. The section heading for § 7.1020 is revised to read as follows:

§ 7.1020 Purchase of open accounts by a national bank.

* * * * *

■ 56. The heading of subpart B of part 7 is revised to read as follows:

Subpart B—National Bank Corporate Practices

§ 7.2000 [Amended]

■ 57. Footnote 2 in § 7.2000 is amended by removing ''(202) 874–4700'' and adding in its place ''(202) 649–6700''.

■ 58. The heading of subpart C of part 7 is revised to read as follows:

Subpart C—Operations

■ 59. The section heading for § 7.3000 is revised to read as follows:

§ 7.3000 National bank hours and closings.

* * * * *

■ 60. Section 7.3001 is revised to read as follows:

§ 7.3001 Sharing national bank or Federal association space and employees.

(a) *Sharing space.* A national bank or Federal savings association may:

(1) Lease excess space on national bank or Federal savings association premises to one or more other businesses (including other financial institutions);

(2) Share space jointly held with one or more other businesses; or

(3) Offer its services in space owned by or leased to other businesses.

(b) *Sharing employees.* When sharing space with other businesses as described in paragraph (a) of this section, a national bank or Federal savings association may provide, under one or more written agreements between the national bank or Federal savings association, the other businesses, and their employees, that:

(1) A national bank or Federal savings association employee may act as agent for the other business; or

(2) An employee of the other business may act as agent for the national bank or Federal savings association.

(c) *Supervisory conditions.* When a national bank or Federal savings association engages in arrangements of the types listed in paragraphs (a) and (b) of this section, the national bank or Federal savings association shall ensure that:

(1) The other business is conspicuously, accurately, and separately identified;

(2) Shared employees clearly and fully disclose the nature of their agency relationship to customers of the national bank or Federal savings association and of the other businesses so that customers will know the identity of the national bank, Federal savings association, or other business that is providing the product or service;

(3) The arrangement does not constitute a joint venture or partnership with the other business under applicable state law;

(4) All aspects of the relationship between the national bank or Federal savings association and the other business are conducted at arm's length, unless a special arrangement is warranted because the other business is a subsidiary of the national bank or Federal savings association;

(5) Security issues arising from the activities of the other business on the premises are addressed;

(6) The activities of the other business do not adversely affect the safety and soundness of the national bank or Federal savings association;

(7) The shared employees or the entity for which they perform services are duly licensed or meet qualification requirements of applicable statutes and regulations pertaining to agents or employees of such other business; and

(8) The assets and records of the parties are segregated.

(d) *Other legal requirements.* When entering into arrangements of the types described in paragraphs (a) and (b) of this section, and in conducting operations pursuant to those arrangements, a national bank or Federal savings association must ensure that each arrangement complies with all applicable laws and regulations. If the arrangement involves an affiliate or a shareholder, director, officer or employee of the national bank or Federal savings association:

(1) The national bank or Federal savings association must ensure compliance with all applicable statutory and regulatory provisions governing national bank or Federal savings association transactions with these persons or entities;

(2) The parties must comply with all applicable fiduciary duties; and

(3) The parties, if they are in competition with each other, must consider limitations, if any, imposed by applicable antitrust laws.

(e) *Transition.* If, on May 18, 2015, a Federal savings association shares space or employees with another business under an agreement that complies with the legal requirements that were in effect prior to May 18, 2015, but which would violate any provision of this section, the Federal savings association may continue sharing under the existing agreement but it may not amend, renew, or extend the agreement without prior approval of the appropriate OCC supervisory office.

■ 61. The section heading for § 7.4000 is revised to read as follows:

§ 7.4000 Visitorial powers with respect to national banks.

* * * * *

■ 62. The section heading for § 7.4001 is revised to read as follows:

§ 7.4001 Charging interest by national banks at rates permitted competing institutions; charging interest to corporate borrowers.

* * * * *

§ 7.4003 [Amended]

■ 63. Section 7.4003 is amended by:

■ a. Removing the word ''and'' before the phrase ''automated device for receiving deposits''; and

■ b. Adding the phrase '', personal computer, telephone, and other similar electronic devices'' after the phrase ''automated device for receiving deposits''.

■ 64. The section heading for § 7.4005 is revised to read as follows:

§ 7.4005 Combination of national bank loan production office, deposit production office, and remote service unit.

* * * * *

■ 65. The section heading for § 7.4007 is revised to read as follows:

§ 7.4007 Deposit-taking by national banks.

* * * * *

■ 66. The section heading for § 7.4008 is revised to read as follows:

§ 7.4008 Lending by national banks.

* * * * *

■ 67. The heading of subpart E to part 7 is revised to read as follows:

Subpart E—National Bank Electronic Activities

PART 14—CONSUMER PROTECTION IN SALES OF INSURANCE

■ 68. The authority citation for part 14 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24(Seventh), 92, 93a, 1462a, 1463, 1464, 1818, 1831x, and 5412(b)(2)(B).

■ 69. Section 14.10(b) is amended by removing the phrase ''§ 159.3(h) of this chapter'' and adding in its place the phrase ''§ 5.38(e)(3) of this chapter''.

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

■ 70. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24 (Eleventh), 93a, 481, and 1818.

§ 24.5 [Amended]

■ 71. Section 24.5(a)(2) is amended by removing ''(202) 874–4652'' and adding in its place ''(202) 649–5709 ''.

■ 72. Appendix 1 to part 24 is revised to read as follows:

Appendix 1 to Part 24—CD–1—National Bank Community Development (Part 24) Investments

BILLING CODE 4810–33–P

Comptroller of the Currency
Administrator of National Banks

CD-1 – National Bank Community Development (Part 24) Investments

For Official Use Only

OMB Number
1557-0194

A national bank or national bank subsidiary may make an investment directly or in directly designed primarily to promote the public welfare under the community development investment authority in 12 USC 24(Eleventh) and its implementing regulation 12 CFR 24 (Part 24). Part 24 contains the OCC standards for determining whether an investment is designed to promote the public welfare and procedures that apply to those investments. National banks must submit the completed form to provide an after-the-fact notice or to request prior approval of a public welfare investment to the Community Affairs Department, Office of the Comptroller of the Currency, Washington, DC 20219. Please contact the Community Affairs Department at (202) 649-6420 or CommunityAffairs@occ.treas.gov for more information.

PLEASE PROVIDE THE FOLLOWING INFORMATION ABOUT THE INVESTING BANK.

Bank name:	Mailing address *(street or P.O. box):*
Bank charter number:	City, State, ZIP Code:
Telephone number:	Fax number:
E-mail address:	URL:

CONTACT FOR INFORMATION:

Name of bank contact responsible for form's information:	Name of bank contact responsible for CD investment (if different):
Mailing address *(street or P.O. box):*	Mailing address *(street or P.O. box)*:
City, State, ZIP Code:	City, State, ZIP Code:
Telephone number:	Telephone number:
Fax number:	Fax number:
E-mail address:	E-mail address:

PLEASE INDICATE THE PROCESS THE BANK REQUESTS BY CHECKING THE APPROPRIATE BOX, BELOW.

After-the-fact notice (12 CFR 24.5(a)) - complete sections 1 and 2. ☐

Prior approval (12 CFR 24.5(b)) - complete section 2. ☐

Section 1 – After-The-Fact Notice Only (12 CFR 24.5(a))

A bank may provide an after-the-fact notice of its Part 24 investment if the bank responds affirmatively to all of the following requirements.

The bank is "well-capitalized," as defined in 12 CFR 24.2(i). Yes ☐ No ☐

The bank has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System. Yes ☐ No ☐

The bank's most recent Community Reinvestment Act rating is satisfactory or outstanding. Yes ☐ No ☐

The bank is not under a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive.

Yes ☐ No ☐

Including this investment, the bank's aggregate outstanding investments and commitments under Part 24 do not exceed 5 percent of its capital and surplus, unless the OCC has provided written approval of a written request by the bank allowing the bank to provide after-the-fact notices for investments that would raise the aggregate amount of the bank's Part 24 investments beyond 5 percent of its capital and surplus.

Yes ☐ No ☐

The investment does not involve properties carried on the bank's books as "other real estate owned." Yes ☐ No ☐

The OCC has not determined, in published guidance, that the investment is inappropriate for the after-the-fact notification.

Yes ☐ No ☐

Has the bank responded affirmatively to all of the above requirements in order to provide an after-the-fact notice of its Part 24 investment? [The OCC may have provided written notification that the bank may submit Part 24 after-the-fact notices. If so, please provide the date or a copy of the OCC's written notification.]

Yes ☐ (The bank may make an investment authorized by 12 USC 24(Eleventh) and this part and notify the OCC within 10 working days by submitting a completed after-the-fact notice.)

No ☐ (The bank must seek prior OCC approval of its investment and submit a completed investment proposal before making the investment.)

(To complete the after-the-fact notice process or to request prior OCC approval, please proceed to section 2 of this form.)

Section 2 — All Requests

1. **Please indicate how the bank's investment is consistent with Part 24 requirements for public welfare investments, under 12 CFR 24.3.**

   a. Check at least one of the following that applies to the bank's investment:

   The investment primarily benefits low- and moderate-income individuals. ☐

   The investment primarily benefits low- and moderate-income areas. ☐

   The investment primarily benefits other areas targeted by a governmental entity for redevelopment. ☐

   The investment would receive consideration under 12 CFR 25.23 as a "qualified investment" for purposes of the Community Reinvestment Act. ☐

2. ***Please indicate how the bank's investment is consistent with Part 24 requirements for investment limits under 12 CFR 24.4 by responding to the following questions.***

   a. Dollar amount of the bank's investment that is the subject of this submission: _____

   b. Percentage of the bank's capital and surplus represented by the bank's investment that is the subject of this submission: _____%.

   c. Percentage of the bank's capital and surplus represented by the aggregate outstanding Part 24 investments and commitments, including this investment: _____%.

   d. Does this investment expose the bank to unlimited liability?

   Yes ☐ (This investment cannot be made under Part 24.)

   No ☐

3. ***Please attach a brief description of the bank's investment. (See 12 CFR 24.5(a)(3)(i) and (b)(2)(i)). Include the following information in the description.***

   a. The name of the community and economic development entity (CEDE) into which the bank's investment has been (or will be) made.

   b. The type of bank investment (equity, debt, or other).

   c. The activity or activities of the CEDE in which the bank has invested (or will invest). (*See* examples of qualifying investment activities described in 12 CFR 24.6 (a), (b), (c), and (d).)

   d. How the investment is structured so that it does not expose the bank to unlimited liability, such as by describing the structure of the CEDE (*e.g.*, CDC subsidiary, multi-bank CDC, multi-investor CDC, limited partnership, limited liability company, community development bank, community development financial institution, community development entity, community development venture capital fund, community development lending consortia, community development closed-end mutual funds, non-diversified closed-end investment companies, or any other CEDE) and by providing any other relevant information.

e. The geographic area served by the CEDE.

f. The total funding or other support by community development partners involved in the project (*e.g.*, government or public agencies, nonprofits, other investors), if known.

g. Supplemental information (*e.g.*, prospectus, annual report, Web address that contains information about the CEDE in which the investment is or will be made), if available.

4. *Evidence of qualification is readily available for examination purposes.*

The bank maintains information concerning this investment in a form readily accessible and available for examination that supports the certifications contained in this form and demonstrates that the investment meets the standards set out in 12 CFR 24.3, including, where applicable, the criteria of 12 CFR 25.23.

Yes ☐ No ☐

5. *Certification*

The undersigned hereby certifies that the foregoing information in this form is accurate and complete. It is further certified that the undersigned is authorized to file this form on Part 24 investments for the bank.

Name: _____

Title: _____

Signature: _____

Date: _____

THE SPACE BELOW MAY BE USED TO DESCRIBE THE BANK'S CD INVESTMENT AS REQUESTED IN SECTION 2, QUESTION 3

BILLING CODE 4810–33–C

PART 32—LENDING LIMITS

§ 32.1 Authority, purpose and scope.

■ 73. The authority citation for part 32 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 12 U.S.C. 84, 93a, 1462a, 1463, 1464(u), 5412(b)(2)(B), and 15 U.S.C. 1639h.

§ 32.2 [Amended]

■ 74. Section 32.2(g)(1)(iv) is amended by removing ''paragraph (cc)'' and adding in its place ''paragraph (ee)''.

■ 75. Section 32.3(d)(2) is revised to read as follows:

§ 32.3 Lending limits.

* * * * *

(d) * * *

(2) *Loans by savings associations to develop domestic residential housing units.* (i) Subject to paragraph (d)(2)(ii) of this section, a savings association may make loans to one borrower to develop domestic residential housing units, not to exceed the lesser of $30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus, including all loans and extensions of credit subject to paragraph (a) of this section, *provided that:*

(A) The savings association is, and continues to be, in compliance with 12 CFR part 3, part 390, subpart Z, or part 324, as applicable;

(B) Upon application by a savings association under paragraph (d)(2)(iv) of this section, the appropriate Federal banking agency permits, subject to conditions it may impose, the savings association to use the higher limit set forth under this paragraph (d)(2)(i);

(C) The loans and extensions of credit made under this paragraph (d)(2)(i) to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus; and

(D) The loans and extensions of credit made under this paragraph (d)(2)(i) comply with the applicable loan-to-value requirements.

(ii) The authority of a savings association to make a loan or extension of credit under the exception in paragraph (d)(2)(i) of this section ceases immediately upon the association's failure to comply with any one of the requirements set forth in paragraph (d)(2)(i) of this section or any condition(s) set forth in an order issued by the appropriate Federal banking agency under paragraphs (d)(2)(i)(B) and (d)(2)(iv) of this section.

(iii) As used in this section, the term ''*to develop*'' includes each of the various phases necessary to produce housing units as an end product, such as acquisition, development and construction; development and construction; construction; rehabilitation; and conversion; and the term ''*domestic''* includes units within the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands;

(iv) *Procedures*—(A) *Federal savings associations.* (*1*) *Application.* A Federal savings association must submit an application to, and receive approval from, the appropriate OCC supervisory office before using the higher limit set forth under paragraph (d)(2)(i) of this section. The supervisory office may approve a completed application if it finds that approval is consistent with safety and soundness. To be deemed complete, the application must include:

(*i*) If applicable, certification that the savings association is an ''eligible savings association'';

(*ii*) A demonstration that the savings association meets the requirements of paragraphs (d)(2)(i)(A), (C), and (D) of this section;

(*iii*) A copy of a written resolution by a majority of the savings association's board of directors approving the use of the limits provided in paragraphs (d)(2)(i) of this section, and confirming the terms and conditions for use of this lending authority; and

(*iv*) A description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.

(*2*) *Expedited review.* An application by an eligible savings association is deemed approved as of the 30th day after the application is received by the OCC, unless before that date the OCC informs the savings association it must obtain prior written approval from the OCC.

(B) *State savings associations.* A state savings association shall seek approval to use the higher limit set forth under paragraph (d)(2)(i) of this section from its appropriate Federal banking agency, under the rules and procedures established by the appropriate Federal banking agency.

* * * * *

§ 32.7 [Amended]

■ 76. Section 32.7(b) introductory text is amended by removing the phrase ''An eligible bank or eligible savings association'' and adding in its place the phrase ''An eligible national bank or eligible savings association''.

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 77. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j–3, 1828(o), 3331 *et seq.,* and 5412(b)(2)(B).

§ 34.84 [Removed]

■ 78. Section 34.84 is removed.

PART 100—RULES APPLICABLE TO SAVINGS ASSOCIATIONS

■ 79. The authority citation for part 100 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 5412(b)(2)(B), 5414(b)(2).

§ 100.1 [Amended]

■ 80. Section 100.1 is amended by removing the phrase ''The regulations set forth in parts 100 through 197 of this chapter I'' and adding in its place the phrase ''The regulations set forth in parts 1 through 197 of this chapter I''.

§ 100.2 [Amended]

■ 81. Section 100.2 is amended by removing the phrase ''any provision of parts 100 through 197'' and adding in its place the phrase ''any provision of parts 1 through 197 of this chapter I, as applicable, with respect to Federal savings associations''.

PART 116—[REMOVED]

■ 82. Part 116 is removed.

PART 143—FEDERAL SAVINGS ASSOCIATIONS—GRANDFATHERED AUTHORITY

■ 83. The authority citation for part 143 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901 *et seq.,* 5412(b)(2)(B).

■ 84. The heading of part 143 is revised to read as set forth above.

§§ 143.1 through 143.11 and 143.14 [Removed]

■ 85. Sections 143.1 through 143.11 are removed.

§ 143.14 [Removed]

■ 86. Section 143.14 is removed.

PART 144—FEDERAL MUTUAL SAVINGS ASSOCIATIONS—COMMUNICATION BETWEEN MEMBERS

■ 87. The authority citation for part 144 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901 *et seq.,* 5412(b)(2)(B).

■ 88. The heading of part 144 is revised to read as set forth above.

§§ 144.1, 144.2, 144 through 144.7, and Part 144 Undesignated Center Headings [Removed]

■ 89. Sections 144.1, 144.2, 144.4 through 144.7, and the undesignated center headings ''Charter'', ''Bylaws'', and ''Availability'' are removed.

PART 145—FEDERAL SAVINGS ASSOCIATIONS—OPERATIONS

■ 90. The authority citation for part 145 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828. 5412(b)(2)(B).

§ 145.91 [Removed]

■ 91. Section 145.91 is removed.

§ 145.92 [Amended]

■ 92. Section 145.92(b) is amended by removing the phrase ''at §§ 145.93 and 145.95 of this chapter'' and adding in its place the phrase ''at § 5.31 of this chapter''.

§§ 145.93, 145.95 and 145.96 [Removed]

■ 93. Sections 145.93, 145.95 and 145.96 are removed.

PART 146—[REMOVED]

■ 94. Part 146 is removed.

PART 150—FIDUCIARY POWERS OF FEDERAL SAVINGS ASSOCIATIONS

■ 95. The authority citation for part 150 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

■ 96. Section 150.70 is revised to read as follows:

§ 150.70 Must I obtain OCC approval or file a notice before I exercise fiduciary powers?

Except for fiduciary activities subject solely to subpart E, you should refer to 12 CFR 5.26 to determine if you must obtain OCC approval or file a notice with the OCC before you exercise fiduciary powers. A Federal savings association may not exercise fiduciary powers unless it obtains prior approval from the OCC to the extent required under 12 CFR 5.26.

§§ 150.80, 150.90, 150.100, 150.110, 150.120, and 150.125 [Removed]

■ 97. Sections 150.80, 150.90, 150.100, 150.110, 150.120, and 150.125 are removed.

§ 150.130 [Amended]

■ 98. Paragraph (a) of § 150.130 is amended by removing the phrase ''in subpart A of this part'' and adding in its place the phrase ''in § 5.26 of this chapter''.

PART 152—[REMOVED]

■ 99. Part 152 is removed.

PART 159—[REMOVED]

■ 100. Part 159 is removed.

PART 160—LENDING AND INVESTMENT

■ 101. The authority citation for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106

§ 160.30 [Amended]

■ 102. Footnote 16 to § 160.30 is amended by removing the phrase ''part 159 of this chapter'' and adding in its place ''§ 5.59 of this chapter''.

■ 103. Section 160.32 is amended by:

■ a. Revising paragraph (b); and

■ b. Removing paragraph (c).

The revision reads as follows:

§ 160.32 Pass-through investments.

* * * * *

(b) Your pass-through investments are subject to the requirements and filing procedures of 12 CFR 5.58.

■ 104. Section 160.35(d)(3) is amended by revising the second sentence to read as follows:

§ 160.35 Adjustments to home loans.

* * * * *

(d) * * *

(3) * * * If the OCC provides such notice to the Federal savings association, the Federal savings association may not use that index unless it applies for and receives the OCC's prior written approval.

§ 160.37 [Removed]

■ 105. Section 160.37 is removed.

PART 161—DEFINITIONS FOR REGULATIONS AFFECTING ALL SAVINGS ASSOCIATIONS

■ 106. The authority citation for part 161 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 5412(b)(2)(B).

■ 107. Section 161.45 is revised to read as follows:

§ 161.45 Service corporation.

The term *service corporation* has the meaning set forth in § 5.59(d)(4) of this chapter.

PART 162—REGULATORY REPORTING STANDARDS

■ 108. The authority citation for part 162 continues to read as follows:

Authority: 12 U.S.C. 1463, 5412(b)(2)(B).

§ 162.4 [Amended]

■ 109. Section 162.4(b) is amended by removing the phrase '', as defined at § 116.5(c) of this chapter'' and adding in its place the phrase ''under the Uniform Financial Institutions Rating System''.

PART 163—SAVINGS ASSOCIATIONS—OPERATIONS

■ 110. The authority citation for part 163 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1817, 1820, 1828, 1831o, 3806, 5101 *et seq.,* 5412(b)(2)(B); 31 U.S.C. 5318; 42 U.S.C. 4106.

§ 163.1 [Removed]

■ 111. Section 163.1 is removed.

§ 163.22 [Removed]

■ 112. Section 163.22 is removed.

§ 163.81 [Removed]

■ 113. Section 163.81 is removed.

Subpart E—[Removed and Reserved]

■ 114. Subpart E of part 163 is removed and reserved.

Subpart H—[Removed]

■ 115. Subpart H of part 163 is removed.

PART 174—[REMOVED]

■ 116. Part 174 is removed.

PART 192—CONVERSIONS FROM MUTUAL TO STOCK FORM

■ 117. The authority citation for part 192 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901, 5412(b)(2)(B); 15 U.S.C. 78c, 78*l,* 78m, 78n, 78w.

■ 118. Section 192.25 is amended by:

■ a. Revising the definition of *Acting in concert;* and

■ b. Amending the definition of *Control* by removing the phrase ''in part 174 of this chapter'' and adding in its place the phrase ''in § 5.50 of this chapter''.

The revision reads as follows:

§ 192.25 What definitions apply to this part?

* * * * *

Acting in concert has the same meaning as in § 5.50(d)(2) of this

chapter. The rebuttable presumptions of § 5.50(f)(2) of this chapter, other than § 5.50(f)(2)(ii)(A) and (B) of this chapter, apply to the share purchase limitations at §§ 192.355 through 192.395.

* * * * *

§ 192.180 [Amended]

■ 119. Section § 192.180 is amended in paragraph (a) by removing the phrase ''in subpart B of part 116 of this chapter'' and adding in its place ''in § 5.8 of this chapter''.

§ 192.185 [Amended]

■ 120. Section 192.185 is amended by removing the phrase ''in subpart C of part 116 of this chapter'' and adding in its place ''in § 5.10 of this chapter''.

§ 192.430 [Amended]

■ 121. Section 192.430 is amended in paragraphs (a) and (c) by:

■ a. Removing the phrase ''part 152 of this chapter'' and adding in its place ''§ 5.22 of this chapter''; and

■ b. Removing the sentence ''*See* 12 CFR 152.4(b)(8).'' and adding in its place ''*See* § 5.22(g)(7).''.

§ 192.510 [Amended]

■ 122. Paragraph (c)(1) of § 192.510, is amended by removing the phrase ''at part 163, subpart E of this chapter'' and adding in its place ''at § 5.55 of this chapter''.

§ 192.520 [Amended]

■ 123. Paragraph (c) of § 192.520, is amended by removing the phrase ''under part 163, subpart E of this chapter'' and adding in its place ''under § 5.55 of this chapter''.

§ 192.525 [Amended]

■ 124. Section 192.525 is amended by:

■ a. In paragraph (b), removing the phrase ''under §§ 174.4(a) and (b) of this chapter'' and adding in its place '' under § 5.50 of this chapter''; and

■ b. In paragraph (c)(5), removing the phrase ''under part 174 of this chapter'' and adding in its place ''under § 5.50 of this chapter''.

§ 192.660 [Amended]

■ 125. Paragraph (g)(2) of § 192.660 is amended by removing the phrase ''under part 174 of this chapter'' and adding in its place ''under § 5.50 of this chapter''.

PART 193—ACCOUNTING REQUIREMENTS

■ 126. The authority citation for part 193 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B); 15 U.S.C. 78c(b), 78m, 78n, 78w.

§ 193.101 [Amended]

■ 127. In paragraph (c) of § 193.101, remove the phrase ''and § 163.81 of this chapter'' and add in its place the phrase ''and § 5.56 of this chapter''.

Dated: May 5, 2015.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2015–11229 Filed 5–15–15; 8:45 am]

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Part III

Department of Education

34 CFR Part 668
Program Integrity and Improvement; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

[Docket ID ED–2015–OPE–0020]

RIN 1840–AD14

Program Integrity and Improvement

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the cash management regulations under subpart K and other sections of the Student Assistance General Provisions regulations issued under the Higher Education Act of 1965, as amended (HEA). These proposed regulations are intended to ensure that students have convenient access to their title IV, HEA program funds, do not incur unreasonable and uncommon financial account fees on their title IV funds, and are not led to believe they must open a particular financial account to receive their Federal student aid. In addition, these proposed regulations update other provisions in the cash management regulations under subpart K and otherwise amend the Student Assistance General Provisions. We also propose to clarify how previously passed coursework is treated for title IV eligibility purposes and streamline the requirements for converting clock hours to credit hours.

DATES: We must receive your comments on or before July 2, 2015.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. *Please do not submit the PDF in a scanned format.* Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Jean-Didier Gaina, U.S. Department of Education, 1990 K Street NW., Room 8055, Washington, DC 20006.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For clock-to-credit-hour conversion: Amy Wilson, U.S. Department of Education, 1990 K Street NW., Room 8027, Washington, DC 20006–8502. Telephone: (202) 502–7689 or by email at: *amy.wilson@ed.gov.*

For repeat coursework: Vanessa Freeman, U.S. Department of Education, 1990 K Street NW., Room 8040, Washington, DC 20006–8502. Telephone: (202) 502–7523 or by email at: *vanessa.freeman@ed.gov* or Aaron Washington, U.S. Department of Education, 1990 K Street NW., Room 8033, Washington, DC 20006–8502. Telephone: (202) 502–7478 or by email at: *aaron.washington@ed.gov.*

For cash management: Ashley Higgins, U.S. Department of Education, 1990 K Street NW., Room 8037, Washington, DC 20006–8502. Telephone: (202) 219–7061 or by email at: *ashley.higgins@ed.gov* or Tony Gargano, U.S. Department of Education, 1990 K Street NW., Room 8020, Washington, DC 20006–8502. Telephone: (202) 502–7519 or by email at: *anthony.gargano@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Throughout this preamble, we refer to title IV, HEA program funds using naming conventions common to the student aid community, including ''title IV student aid'' and similar phrasing.

Executive Summary

Purpose of This Regulatory Action:

Over the past decade, the student financial products marketplace has shifted and the budgets of postsecondary institutions have become increasingly strained, in part due to declining State funding. These changes have coincided with a proliferation of agreements between postsecondary institutions and financial account providers. Cards offered pursuant to these arrangements, usually in the form of debit or prepaid cards and sometimes cobranded with the institution's logo or combined with student IDs, are marketed as a way for students to receive their title IV credit balances via a more convenient electronic means. However, as we describe in more detail elsewhere in this preamble, a number of reports from government and consumer groups document troubling practices employed by some financial account providers. Legal actions, especially those initiated by the Federal Reserve and Federal Deposit Insurance Corporation (FDIC), against the sector's largest provider reinforce some of these concerns.

According to these reports, many of the following practices were found:

- Providers prioritizing disbursements to their own affiliated accounts over aid recipients' preexisting bank accounts;
- Providers and schools strongly implying to students that signing up for the college card account was required to receive Federal student aid;
- Private student information unrelated to the financial aid process being given to providers before aid recipients consented to opening accounts;
- Access to the funds on the college card was not always convenient; and
- Aid recipients being charged onerous, confusing, or unavoidable fees in order to access their student aid funds or to otherwise use the account.

As discussed in further detail under the heading ''Fee provisions for T1 accounts,'' these practices indicate that many institutions have shifted costs of administering the title IV, student aid programs from institutions to students. Given that approximately nine million students attend schools with these agreements, that approximately $25 billion dollars in Pell Grant and Direct Loan program funds are disbursed to undergraduates at these institutions, that students are a captive audience subject to marketing from their institution, that the college card market is expanding, and given the concerns raised by existing practices, we believe regulatory action governing the disbursement of title IV, student aid is warranted.

In addition, we include in the proposed regulations a number of minor

changes that reflect updated Office of Management and Budget (OMB) guidance for Federal awards, clarify some provisions to further safeguard title IV funds, and remove references to programs that are no longer authorized.

Finally, we address in the proposed regulations two issues unrelated to cash management—repeat coursework and clock-to-credit-hour conversion—that were identified by the higher education community as requiring review. We believe these proposed regulatory changes would result in more equitable treatment of student aid recipients.

Summary of the Major Provisions of This Regulatory Action:

The proposed regulations would—

- Explicitly reserve the right for the Secretary to establish a method for directly paying credit balances to student aid recipients;
- Establish two different types of arrangements between institutions and financial account providers, ''tier one (T1) arrangement'' and ''tier two (T2) arrangement,'' respectively;
- Define a ''T1 arrangement'' as an arrangement between an institution and a third-party servicer that performs one or more of the functions associated with processing direct payments of title IV funds on behalf of the institution and that offers one or more financial accounts to students and parents;
- Define a ''T2 arrangement'' as an arrangement between an institution and a financial institution or entity that offers financial accounts through a financial institution under which financial accounts are offered and marketed directly to students or their parents, with the regulatory consequences of T2 status to apply absent documentation from the institution that students or parents do not have credit balances at the institution;
- Require institutions that have T1 or T2 arrangements to establish a student choice process that: Prohibits an institution from requiring students or parents to open an account into which their credit balances must be deposited; requires an institution to provide a list of account options that a student may choose from to receive credit balance funds, where each option is presented in a neutral manner and the student's preexisting bank account is listed as the first, most prominent, and default option; and ensures electronic payments made to a student's preexisting account are as timely as, and no more onerous, as payments deposited to an account made available pursuant to a T1 or T2 arrangement;
- Require that the institution obtain consent from the student or parent to open an account under a T1 or T2 arrangement (1) before the institution shares personal information about that student or parent with the financial account provider, and (2) before the institution or account provider sends an access device to the student or parent or links the student's ID card with a financial account;
- Mitigate fees incurred by student aid recipients by requiring reasonable access to surcharge-free automated teller machines (ATMs), and, for accounts offered under a T1 arrangement, both prohibiting point-of-sale fees and overdraft fees charged to student and parent account holders, and providing students and parents with 30 days following a disbursement of title IV funds to access those funds without any fees;
- Require that contracts governing T1 or T2 arrangements and cost information related to those contracts are publicly disclosed; and
- Require that institutions that have T1 or T2 arrangements establish and evaluate the contracts governing those arrangements in light of the best financial interests of students.

The proposed regulations would also—

- Allow an institution offering term-based programs to count, for enrollment purposes, courses a student is retaking that the student previously passed, up to one repetition per course, including when a student is retaking a previously passed course due to the student failing other coursework; and
- Streamline the requirements governing clock-to-credit-hour conversion by removing the provisions under which a State or Federal approval or licensure action could cause a program to be measured in clock hours.

Please refer to the *Significant Proposed Regulations* section of this preamble for a detailed discussion of the major provisions contained in the proposed regulations.

Costs and Benefits: The benefits of these proposed regulations include providing information that will allow students and parents to make informed and beneficial decisions regarding the handling and distribution of their title IV funds. These disclosures will also help prevent students from being misled into believing that they are required to use a financial account or access device that has the apparent endorsement of their school.

These proposed regulations would also benefit students by guaranteeing the right to receive their title IV credit balances at a financial institution and through an access device of their choice. Students who decide to choose accounts with lower fees, and who would have otherwise been steered toward a higher-cost account, will save money and be able to use more of their title IV aid for educational expenses. Students who open accounts covered by these regulations would benefit from having more surcharge-free ATMs from which to access their title IV credit balances. The proposed regulations also would help protect both students and parents from deceptive marketing practices aimed at encouraging them to do business with a particular financial institution in order to access title IV funds.

There would be costs incurred by postsecondary and financial institutions under these proposed regulations. Some postsecondary institutions and financial institutions that do not choose to price their products competitively or that do not justify higher prices (with, for example, superior customer service, better account features, free banking services, the elimination of certain fees) could lose future customers as students or parents decide to use lower-cost accounts as a result of fee disclosures. The T1 arrangement fee provisions will also have cost implications for affected financial institutions and for institutions that currently receive free- or reduced-price title IV administrative services (or other remuneration), and will likely lower the revenue for schools when financial account providers' ability to pass costs on to title IV recipients is limited under these regulations. Some of these costs will include performing due diligence reviews to ensure that contracts are made in the best interests of students, the costs of providing surcharge-free ATM network access, and the costs of presenting credit balance recipients with a list of neutral account options. Other costs would depend upon aid recipient behavior, and the Department expects that many financial account providers may earn less from their student accounts under the proposed regulations. The provisions regarding convenient access benefit students and could also have cost implications for some financial account providers and institutions. Financial account providers could have to deploy additional ATMs or pay fees to ATM network providers to comply with these proposed requirements.

Some institutions with T1 or T2 arrangements could incur costs when establishing a student choice process that would allow students to select among a list of available accounts into which title IV credit balances would be disbursed. Institutions would also likely incur some paperwork burden related to

making fee disclosures, and students would incur an additional paperwork burden when selecting an option for how to receive their credit balance from a list of options.

Invitation to Comment: We invite you to submit comments regarding the proposed regulations. In particular, we request comment on:

- Whether proposed methods for prorating institutional charges under § 668.164(c)(5) are appropriate;
- How an institution should disclose the costs of books and supplies that are included as part of tuition and fees under § 668.164(c)(2) and frequency of those disclosures;
- Whether the option to receive a check should continue to be affirmatively offered to students as provided under proposed § 668.164(d)(4)(i)(B)(*4*);
- Whether there is a need to establish a minimum number of credit balance recipients at an institution before the institution must comply with the provisions of proposed § 668.164(f)(4);
- Whether the personal information that an institution may provide before a student or parent consents to open a financial account, as provided under § 668.164(e)(2)(i)(A) and (f)(4)(i)(A), is sufficient to meet the needs of a servicer or financial institution;
- Whether the Department should take more proscriptive action than the one proposed in this NPRM to prevent abusive marketing practices with respect to institutional devices such as student IDs and associated financial accounts;
- Whether 30 days following a disbursement is an appropriate timeframe to allow a title IV aid recipient an opportunity to reasonably access aid dollars free of charge as provided under proposed § 668.164(e)(2)(iii)(B)(*4*);
- Whether, as proposed in § 668.164(e)(2)(vii) and (f)(4)(vii), it would be in the best financial interests of students to require institutions that have a T1 or T2 arrangement to periodically conduct reasonable due diligence reviews to ascertain whether the fees imposed under the arrangement are excessive; and
- Whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Please refer to the relevant portions of the *Significant Proposed Regulations* section of this preamble for more detail on each of the issues for which we specifically request comment.

To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses, and provide relevant information and data, as well as other supporting materials in the request for comment, even when there is no specific solicitation of data. We also urge you to arrange your comments in the same order as the proposed regulations. Please do not submit comments outside the scope of the specific proposals and proposed regulations in this notice of proposed rulemaking, as we are not required to respond to comments that are outside of the scope of the proposed rule. See **ADDRESSES** for instructions on how to submit comments.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 8055, 1990 K Street NW., Washington, DC, between 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Public Participation

On May 1, 2012, we published a notice in the **Federal Register** (77 FR 25658) announcing our intent to establish a negotiated rulemaking committee under section 492 of the HEA to develop proposed regulations designed to prevent fraud and otherwise ensure proper use of title IV Federal Student Aid program funds, especially within the context of current technologies. In particular, we announced our intent to propose regulations to address the use of debit cards and other banking products for disbursing title IV Federal Student Aid program funds, and to improve and streamline the campus-based Federal Student Aid programs. On April 16, 2013, we published a notice in the **Federal Register** (78 FR 2247), which we corrected on April 30, 2013 (78 FR 25235), announcing additional topics for consideration for action by a negotiated rulemaking committee. The following topics for consideration were identified: Cash management of funds provided under the title IV Federal Student Aid programs; State authorization for programs offered through distance education or correspondence education; State authorization for foreign locations of institutions located in a State; clock-to-credit-hour conversion; gainful employment; changes to the campus safety and security reporting requirements in the Clery Act made by the Violence Against Women Act; and the definition of ''adverse credit'' for borrowers in the Federal Direct PLUS Loan program.

In that notice, we announced three public hearings at which interested parties could comment on the topics suggested by the Department and could suggest additional topics for consideration for action by a negotiated rulemaking committee. We also invited parties unable to attend a public hearing to submit written comments on the additional topics and to submit other topics for consideration. On May 13, 2013, we announced in the **Federal Register** (78 FR 27880) the addition of a fourth hearing. The hearings were held on May 21, 2013, in Washington, DC; May 23, 2013, in Minneapolis, Minnesota; May 30, 2013, in San Francisco, California; and June 4, 2013, in Atlanta, Georgia. Transcripts from the public hearings are available at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html.* Written comments submitted in response to the April 16, 2013, notice may be viewed through the Federal eRulemaking Portal at *www.regulations.gov,* within docket ID ED–2012–OPE–0008. You can link to the ED–2012–OPE–0008 docket as a related docket inside the ED–2013–OPE–0124 docket associated with this notice of proposed rulemaking. Alternatively, individuals can enter docket ID ED–2012–OPE–0008 in the search box to locate the appropriate docket. Instructions for finding

comments are also available on the site under ''How to Use Regulations.gov'' in the Help section.

Negotiated Rulemaking

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, in most cases the Secretary must subject the proposed regulations to a negotiated rulemaking process. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without alteration a defined group of regulations on which the negotiators reached consensus unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.*

On November 20, 2013, we published a notice in the **Federal Register** (78 FR 69612) announcing our intent to establish a negotiated rulemaking committee to prepare proposed regulations to address program integrity and improvement issues for the Federal Student Aid programs authorized under title IV of the HEA. That notice set forth a schedule for the committee meetings and requested nominations for individual negotiators to serve on the negotiating committee.

The Department sought negotiators to represent the following groups: Students; legal assistance organizations that represent students; consumer advocacy organizations; State higher education executive officers; State attorneys general and other appropriate State officials; business and industry; institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F and title V of the HEA, which include Historically Black Colleges and Universities (HBCUs), Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA; two-year public institutions of higher education; four-year public institutions of higher education; private, non-profit institutions of higher education; private, for-profit institutions of higher education; regional accrediting agencies; national accrediting agencies; specialized accrediting agencies; financial aid administrators at postsecondary institutions; business officers and bursars at postsecondary institutions; admissions officers at postsecondary institutions; institutional third-party servicers who perform functions related to the title IV Federal Student Aid programs (including collection agencies); State approval agencies; and lenders, community banks, and credit unions. The Department considered the nominations submitted by the public and chose negotiators who would represent the various constituencies.

The negotiating committee included the following members:

Chris Lindstrom, U.S. Public Interest Research Group, and Maxwell John Love (alternate), United States Student Association, representing students.

Whitney Barkley, Mississippi Center for Justice, and Toby Merrill (alternate), Project on Predatory Student Lending, The Legal Services Center, Harvard Law School, representing legal assistance organizations that represent students.

Suzanne Martindale, Consumers Union, representing consumer advocacy organizations.

Carolyn Fast, Consumer Frauds and Protection Bureau, New York Attorney General's Office, and Jenny Wojewoda (alternate), Massachusetts Attorney General's Office, representing State attorneys general and other appropriate State officials.

David Sheridan, School of International & Public Affairs, Columbia University in the City of New York, and Paula Luff (alternate), DePaul University, representing financial aid administrators.

Gloria Kobus, Youngstown State University, and Joan Piscitello (alternate), Iowa State University, representing business officers and bursars at postsecondary institutions.

David Swinton, Benedict College, and George French (alternate), Miles College, representing minority serving institutions.

Brad Hardison, Santa Barbara City College, and Melissa Gregory (alternate), Montgomery College, representing two-year public institutions.

Chuck Knepfle, Clemson University, and J. Goodlett McDaniel (alternate), George Mason University, representing four-year public institutions.

Elizabeth Hicks, Massachusetts Institute of Technology, and Joe Weglarz (alternate), Marist College, representing private, non-profit institutions.

Deborah Bushway, Capella University, and Valerie Mendelsohn (alternate), American Career College, representing private, for-profit institutions.

Casey McGuane, Higher One, and Bill Norwood (alternate), Heartland Payment Systems, representing institutional third-party servicers.

Russ Poulin, WICHE Cooperative for Educational Technologies, and Marshall Hill (alternate), National Council for State Authorization Reciprocity Agreements, representing distance education providers.

Dan Toughey, TouchNet, and Michael Gradisher (alternate), Pearson Embanet, representing business and industry.

Paul Kundert, University of Wisconsin Credit Union, and Tom Levandowski (alternate), Wells Fargo Bank Law Department, Consumer Lending & Corporate Regulatory Division, representing lenders, community banks, and credit unions.

Leah Matthews, Distance Education and Training Council, and Elizabeth Sibolski (alternate), Middle States Commission on Higher Education, representing accrediting agencies.

Carney McCullough, U.S. Department of Education, representing the Department.

Pamela Moran, U.S. Department of Education, representing the Department.

The negotiated rulemaking committee met to develop proposed regulations on February 19–21, 2014, March 26–28, 2014, and April 23–25, 2014. During the March session, the Department proposed adding a negotiated rulemaking session to the schedule to give the negotiators more time to consider the issues and reach consensus on proposed regulatory language. The negotiators agreed to add a fourth and final session. On April 11, 2014, we published in the **Federal Register** (79 FR 20139) a notice announcing the addition of a fourth session. That final session was held on May 19–20, 2014.

At its first meeting, the negotiating committee reached agreement on its protocols and proposed agenda. These protocols provided, among other things, that the committee would operate by consensus. Consensus means that there must be no dissent by any member in order for the committee to have reached agreement. Under the protocols, if the committee reached a final consensus on all issues, the Department would use the consensus-based language in its proposed regulations. Furthermore, the Department would not alter the consensus-based language of its proposed regulations unless the Department reopened the negotiated rulemaking process or provided a written explanation to the committee members regarding why it decided to depart from that language.

During the first meeting, the negotiating committee agreed to negotiate an agenda of six issues related to student financial aid. These six issues were: Clock-to-credit-hour conversion; State authorization of distance education; State authorization of foreign locations of domestic institutions; cash management; retaking coursework; and PLUS loan adverse credit history. Under the protocols, a final consensus would

have to include consensus on all six issues.

During the meeting, the Department explained that it planned to include the proposed regulations that would be published after completion of the negotiated rulemaking process in two separate notices of proposed rulemaking (NPRMs). One NPRM would contain the proposed regulations regarding the definition of adverse credit history for PLUS loans. The second NPRM would contain the remaining topics. The Department has already published an NPRM and final regulations regarding the PLUS loan issues. This NPRM addresses the remaining issues, except for State authorization of distance education and State authorization of foreign locations of domestic institutions. While the Department continues to examine these two issues and work with the higher education community to explore how to address these important topics, we do not want those deliberations to delay the publication of regulations necessary to address cash management, clock-to-credit-hour conversion, and retaking coursework. For more information on the negotiated rulemaking sessions, please visit: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html#info.*

Summary of Proposed Changes

The proposed regulations would—

- Establish and modify the definitions of key terms applicable to subpart K;
- Remove outdated references to programs no longer authorized, especially with respect to the Federal Family Education Loan (FFEL) program;
- Require that an institution exercise the level of care and diligence required of a fiduciary with regard to managing title IV, HEA program funds;
- Remove the reference to the just-in-time payment method, and rename the ''cash monitoring payment method'' as the ''heightened cash monitoring payment method'';
- Require institutions placed on the reimbursement or heightened cash monitoring payment methods to credit a student ledger account for the amount of title IV funds the student is eligible to receive, and pay any credit balance due to that student before seeking reimbursement from the Department;
- Require institutions to maintain title IV funds in an insured depository account consistent with guidance issued by OMB on December 26, 2013, codified at 2 CFR chapter I, 200, et al., Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- Provide that, with limited exceptions, an institution must disburse during a payment period the amount of title IV funds that a student or parent is eligible to receive for that payment period;
- Provide that an institution may credit a student's ledger account to pay for allowable charges associated with a payment period;
- Provide that an institution may include the cost of books and supplies as part of tuition and fees;
- Reserve the Secretary's right to establish a method for directly paying credit balances to student aid recipients;
- Establish two different types of arrangements between institutions and financial account providers, ''tier one (T1) arrangements'' and ''tier two (T2) arrangements,'' respectively;
- Define a ''T1 arrangement'' as an arrangement between an institution and a third-party servicer that performs one or more of the functions associated with processing direct payments of title IV funds on behalf of the institution and that offers one or more financial accounts to students and parents;
- Define a ''T2 arrangement'' as an arrangement between an institution and a financial institution or entity that offers financial accounts through a financial institution, under which financial accounts are offered and marketed directly to students or their parents, with the regulatory consequences of T2 status to apply absent documentation from the institution that students or parents do not have credit balances at the institution;
- Require institutions that have T1 or T2 arrangements to establish a student choice process that: Prohibits an institution from requiring students or parents to open a certain account into which their credit balances are deposited; requires an institution to provide a list of account options that a student may choose from to receive credit balance funds, where each option is presented in a neutral manner and the student's preexisting bank account is listed as the first, most prominent, and default option; and ensures electronic payments made to a student's preexisting account are as timely as, and no more onerous to the student than, payments deposited to an account made available pursuant to a T1 or T2 arrangement;
- Require that the institution obtain consent from the student or parent to open an account under a T1 or T2 arrangement (1) before the institution shares personal information about that student or parent with the financial account provider, and (2) before the institution or provider sends an access device to the student or parent or links the student's ID card with a financial account;
- Mitigate fees incurred by student aid recipients by requiring reasonable access to surcharge-free ATMs, and, for accounts offered under a T1 arrangement, both prohibiting point-of-sale fees and overdraft fees charged to students and parents, and providing students and parents with 30 days following a disbursement of title IV funds to access those funds without any fees;
- Require that contracts governing T1 or T2 arrangements and cost information related to those contracts are publicly disclosed;
- Require that institutions that have T1 or T2 arrangements establish and evaluate the contracts governing those arrangements in light of the best financial interests of students; and
- Prohibit an institution under the reimbursement or heightened cash monitoring payment methods from holding credit balance funds on behalf of a student or parent. The proposed regulations would also—
- Allow an institution offering term-based programs to count, for enrollment purposes, courses a student is retaking that the student previously passed, up to one repetition per course; and
- Streamline the requirements governing clock-to-credit-hour conversion by removing the provisions under which a State or Federal approval or licensure action could cause a program to be measured in clock hours.

Significant Proposed Regulations

Background

Over the past several years, a confluence of factors has significantly altered the landscape of financial products offered to students on college campuses.

In 2009, due largely to concerns raised by consumer advocates and students related to the marketing practices and financial incentives contained in contractual relationships between institutions and credit card providers,[1] Congress passed, and the President signed, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act).[2] The CARD Act made a number of significant changes to the consumer protections available to college students

[1] USPIRG. ''The Campus Debit Card Trap.'' [Pages 4–5] (2012), available at *www.uspirg.org/sites/pirg/files/reports/thecampusdebitcardtrap_may2012_uspef.pdf.* With subsequent references ''USPIRG at [page number].''

[2] Public Law 111–24.

by authorizing new rules to curtail overzealous credit card marketing practices on campus, impose transparency requirements (the contract must be annually sent to the Consumer Financial Protection Bureau (CFPB)), ban ''free'' gifts for signing up for an account, and require consumers under the age of 21 to show ability to pay or get a co-signer in order to get a credit card.[3]

A second product widely offered to students was a recommended or ''preferred'' student loan. In 2007, then-Attorney General for New York Andrew Cuomo led an investigation into financial incentives provided to colleges for steering students into certain types of student loans. As a result, Congress, as a part of the Higher Education Opportunity Act of 2008, banned gifts and revenue sharing as part of the so-called ''preferred lender list'' reforms. In 2010, Congress passed the President's student loan reform, moving to a 100 percent Direct Loan program for Federal student loans.

Finally, over the past several years, States have made significant cuts to higher education funding, resulting in budget shortfalls that have fostered an environment of tuition increases and other measures shifting costs to students which has coincided with the proliferation of college debit and prepaid card agreements between institutions and financial account providers.[4]

The combination of funding cuts and limitations on cost-shifting to students through the CARD Act and preferred lender list reforms has created an environment where some colleges are increasingly searching for revenue-increasing strategies, especially those that can be borne by students. This has led to what the United States Public Interest Research Group (USPIRG) referred to as ''the next financial frontier for banks and financial firms'' that affects students, especially those receiving aid—the proliferation of marketing of campus debit and prepaid cards to students in exchange for monetary benefits to schools, often in the form of significant remuneration or the low- or no-cost administration of financial aid disbursement services.[5]

Consumers Union stated ''as regulations around the marketing of private student loans and school-branded credit cards have tightened in recent years, financial firms have increasingly marketed campus banking products to colleges, universities, and their students.''[6] CFPB has recognized this market transformation as well, stating that, ''financial product marketing partnerships have shifted from credit cards and student loans to student checking, debit, and prepaid card products.''[7] Schools officials have admitted that ''outsourcing eliminated a school process that consumed significant resources, which has been especially important in recent years as schools have faced difficult fiscal conditions and staffing reductions.''[8]

Credit Balances

As the House report on the Higher Education Opportunity Act of 2008 stated, ''[t]he nation's financial aid system exists for a single purpose: To serve students and their families.''[9] The title IV, HEA programs, most prominently Pell Grants and Direct Loans, are designed to help students pay for the costs of attending college.

The amount of Federal financial aid awarded to students and parents is determined, in part, on the basis of an enrolled student's cost of attendance. This includes charges typically paid directly to the school (such as tuition, fees, and on-campus room and board), as well as other costs such as books and supplies, housing, transportation, and dependent care. Typically, an institution applies the total amount of a student's aid against institutional charges, then releases a ''credit balance'' to the student in cases where the amount of aid exceeds the amount of charges.

When we refer to a credit balance in this document, we are referring to the remaining amount of title IV aid after all allowable charges, including tuition and fees, have been paid to the institution. At lower cost institutions, like community colleges, that enroll lower-income and historically underrepresented students, a higher percentage of students receive credit balances.[10]

The College Banking Market

In the past several years, especially in light of tightening budgets and fewer revenue-generating credit card partnerships and student loans, ''a growing number of schools have begun offering banking products to their students in the form of debit and prepaid cards issued through agreements with financial services providers.''[11] The Government Accountability Office (GAO) found that about 11 percent of colleges and universities participating in the Federal Student Aid programs had agreements with financial account providers.[12] While this percentage is relatively low, the size of the institutions that have such agreements are generally large; specifically, about 40 percent of all postsecondary students are enrolled in institutions with these agreements, although not all students at such institutions use the cards.[13] [14]

The agreements are more typical at public institutions—29 percent of public schools had such agreements, compared to 6.5 percent of nonprofit not-for-profit schools and 3.5 percent of for-profit schools.[15] Almost half of all schools that use college-affiliated debit or prepaid cards to disburse financial aid and other payments to students are community colleges.[16] According to a USPIRG analysis, ''32 of the 50 largest public 4-year universities and 26 of the [largest] 50 community colleges'' had a campus debit or prepaid card contract with a bank or financial firm.[17]

As these agreements have begun to proliferate, one provider in particular has become the predominant actor in the market. ''As of July 2013, one provider, Higher One Holdings, Inc., held about a 57 percent share of the college card market, as measured by number of agreements between schools and card providers, as well as number of students at schools with agreements,''

[3] United States Government Accountability Office. ''College Debit Cards: Actions Needed to Address ATM Access, Student Choice, and Transparency.'' [Page 32] (2014), available at *www.gao.gov/assets/670/660919.pdf.* With subsequent references ''GAO at [page number].''

[4] Center on Budget and Policy Priorities. ''Recent Deep State Higher Education Cuts May Harm Students and the Economy for Years to Come.'' [Page 13](2013), available at: *www.cbpp.org/files/3-19-13sfp.pdf.*

[5] USPIRG at 5.

[6] Consumers Union. ''Campus Banking Products: College Students Face Hurdles to Accessing Clear Information and Accounts that Meet Their Needs.'' [Page 1](2014), available at: *consumersunion.org/wp-content/uploads/2014/08/Campus_banking_products_report.pdf.* With subsequent references ''Consumers Union at [page number].''

[7] Consumer Financial Protection Bureau presentation. ''Perspectives on Financial Products Marketed to College Students.'' [Page 5] (2014), available at: *www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii2-cfpb-presentation.pdf.* With subsequent references ''CFPB Presentation at [Page number].''

[8] Office of the Inspector General. ''Third-Party Servicer Use of Debit Cards to Deliver Title IV Funds.'' [Page 3] (2014), available at *www2.ed.gov/about/offices/list/oig/auditreports/fy2014/x09n0003.pdf.* With subsequent references ''OIG at [Page number].''

[9] Committee on Education and Labor. ''House Report Accompanying HR 4137, the College Opportunity and Affordability Act of 2007.'' [Page 240] (2007), available at *https://www.congress.gov/110/crpt/hrpt500/CRPT-110hrpt500.pdf.*

[10] GAO at 12.

[11] GAO at 1.

[12] Ibid. at 8.

[13] Ibid.

[14] USPIRG at 11.

[15] GAO at 10.

[16] GAO at 12.

[17] USPIRG at 6.

according to a GAO analysis.[18] This represents more than 800 campuses that use its services to disburse aid dollars.[19] The balance of the market is comprised mainly of seven other bank and nonbank providers, including U.S. Bank, Citibank, PNC, and Wells Fargo.[20] [21]

According to a National Association of College and University Business Officers (NACUBO) survey polling roughly 400 institutional respondents, ''19 [percent] of surveyed institutions offer a credit balance on a stored value or debit card, 58 [percent] offer an [electronic funds transfer (EFT)] to a student's preexisting bank account, and 10 [percent] offer an EFT to a bank account at a school-selected bank or vendor.'' [22] The survey found that ''26 [percent] [of institutions] reported that they contract with a third-party vendor to process credit balance refunds; a third of those that do not are considering doing so in the future.'' [23]

Troubling Practices

The proliferation of these agreements has coincided with a number of troubling practices that were first reported by USPIRG and reiterated and expanded upon in reports from GAO, the Department's Office of Inspector General (OIG), Consumers Union, and in inquiries from members of Congress. These practices have also resulted in adverse legal actions, especially against the largest financial account provider, Higher One. Each practice is discussed in detail in the relevant section of the preamble.

These reports made several recommendations, which include: Ensuring timely delivery of credit balances to students regardless of account sponsorship; providing a meaningful choice of how to receive title IV dollars, especially when a student has a preexisting bank or prepaid account; clarifying the nature of implied institutional endorsement of certain accounts; ensuring that private student information is not released prior to receiving students' consent to do so; providing neutral account disclosures to enable students to make informed choices about account selection; and giving aid recipients the ability to access their student aid balances conveniently and without onerous, confusing, or unavoidable fees.

In view of the reports from consumer groups and government organizations, the feedback we received from the public through hearings and negotiated rulemaking, and after meeting with staff from the FDIC, Office of the Comptroller of the Currency and Bureau of the Fiscal Service at the U.S. Department of the Treasury (Treasury), and CFPB, we believe it is critical to address the troubling practices arising from college card agreements. Moreover, given the number of students affected by these agreements, the amount of taxpayer-funded title IV aid at stake, and the expanding breadth of the college card market, we believe this regulatory action is necessary. The provisions in this NPRM regulate institutions and third-party servicers that administer the title IV, HEA programs, and do not regulate banking entities. To the extent that these regulations have a material impact on financial account providers, they do so indirectly and only for those providers that choose to engage with institutions that disburse title IV credit balances electronically.

Other Provisions

We are proposing a number of more minor changes in subpart K related to the management of title IV, HEA program funds generally. In addition, we have also removed outdated cross references and references to programs that are no longer authorized, the most prominent of which is the FFEL program.

There are two additional issues that were raised as part of the program integrity and improvement negotiated rulemaking that are addressed in the proposed regulations: (1) Retaking coursework and (2) clock-to-credit-hour conversion rules. These issues, which are distinct from the cash management topics that comprise the majority of the proposed regulations, are discussed in the final portion of this preamble.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

Statutory Authority [24]

Section 401(e) of the HEA, regarding Pell Grants, provides that ''[p]ayments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section.'' It adds that ''[a]ny disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. . . .''

Section 401(a)(1) of the HEA provides that the Secretary shall pay ''to each institution such sums as may be necessary to pay each eligible student . . . a Pell Grant.'' It also provides for the Department to pay institutions the necessary sums prior to the start of each payment period; but, in addition, authorizes the Secretary to ''determine[ ] and publish in the **Federal Register** with an opportunity for comment, an alternative payment system that provides payments to institutions in an accurate and timely manner, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.''

Section 452(c) of the HEA, regarding Direct Loans, states that loan funds ''shall be paid and delivered to an institution by the Secretary prior to the beginning of the payment period established by the Secretary in a manner that is consistent with payment and delivery of Federal Pell Grants. . . .''

Section 487 of the HEA requires, as a prerequisite to title IV participation, that an otherwise eligible institution enter into a program participation agreement with the Secretary conditioning its initial and continuing participation upon compliance with requirements that, among other things, the institution ''use funds received by it for any program under this title and any interest or other earnings thereon solely for the purpose specified in and in accordance with the provision of that program,'' and it ''not charge any student a fee for processing or handing any application, form, or data required to determine the student's eligibility for assistance under this title or the amount of such assistance.''

The HEA also contains numerous provisions to ensure that students receive the title IV awards for which they are eligible for under the statute. For example, section 401(f)(1) of the HEA provides that ''Each student financial aid administrator [at each institution] shall . . . (C) make the award to the student in the correct amount.'' Under section 454(j) of the HEA, ''proceeds of loans to students under [the Direct Loan program] shall be applied to the student's account for

[18] GAO at 13.

[19] Consumers Union at 4.

[20] GAO at 13.

[21] Consumers Union at 10.

[22] National Association of College and University Business Officers. ''Student Refunds and Personal Banking at Colleges and Universities.'' [Page 1] (2014), available at *www.nacubo.org/Documents/BusinessPolicyAreas/NACUBOSURVEY.pdf.* With subsequent references ''NACUBO at [Page number].''

[23] NACUBO at 2.

[24] The statutory authority cited in the following paragraphs is relevant to all of the current regulations and proposed regulations described in this preamble except where otherwise noted.

tuition and fees, and, in the case of institutionally owned housing, to room and board. Loan proceeds that remain after the application of the previous sentence shall be delivered to the borrower by check or other means that is payable to and requires the endorsement or other certification by such borrower.'' Section 454(a)(3) of the HEA requires Direct Loan program participation agreements to provide that the institution ''accepts responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement.'' Section 454(a)(5) of the HEA provides that the Direct Loan program participation agreement shall ''provide that the institution will not charge fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under this part, or any benefits associated with such loan.''

Under section 455(a)(1) of the HEA, the Secretary may prescribe such regulations as may be necessary to carry out the purposes of the Direct Loan program, including regulations applicable to third-party servicers and for the assessment against such servicers of liabilities for program violations of the program regulations against such servicers, to establish minimum standards with respect to sound management and accountability of those the Direct Loan programs.

More broadly, section 487(c)(1)(B) of the HEA provides that the Secretary ''shall prescribe such regulations as may be necessary to provide for'' reasonable standards of financial responsibility, and appropriate institutional administrative capability to administer the title IV programs, in matters not governed by specific program provisions, ''including any matter the Secretary deems necessary to the sound administration of the financial aid programs.'' Third-party servicers are likewise by statute subject to the Department's oversight, including under HEA sections 481(c) and 487(c)(1)(C), (H), and (I) of the HEA.

The Department has consistently interpreted the HEA as authorizing regulation of the matters addressed in the proposed regulations,[25] including the 2007 cash management regulations [26] prohibiting account opening fees, requiring reasonable free ATM access, and requiring prior consent from a student before opening a financial account, and the 1994 regulations relating to third-party servicers.[27]

Definitions (§ 668.161(a))

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

Definitions (§ 668.161(a))

Current Regulations: Section 668.161(a) provides definitions for key terms used in subpart K of the General Provisions Regulations. It does not currently include definitions for the terms ''access device,'' ''depository account,'' ''electronic funds transfer,'' ''financial account,'' ''financial institution,'' ''or a ''student ledger account.''

Access Device

Proposed Regulations: We propose to add the term ''access device'' to § 668.161(a) and define an access device as ''a card, code, or other means of access to a financial account, or any combination thereof, that may be used by the student or parent to initiate electronic fund transfers.''

Reasons: The proposed definition of ''access device'' borrows from the definition of the term in Consumer Financial Protection Bureau regulations at 12 CFR 1005.2(a)(1), except that we propose to substitute ''financial account'' for ''consumer account,'' and ''student or parent'' for ''consumer.'' The inclusion of ''financial account,'' which would be a defined term under these proposed regulations, not only tailors the definition of ''access device'' to the current context, but, like the definition of ''financial account,'' is inclusive, and therefore, unlike current CFPB rules, includes all prepaid card accounts.[28] Our intent is to capture all types of access devices to all types of accounts into which a student or parent may wish to deposit his or her title IV credit balance.

Furthermore, the proposed definition of ''access device'' has the advantage of providing a concise way of referring to the different types of current and future tools students could use to access their financial accounts. During negotiated rulemaking, negotiators expressed concerns that our current terminology might not include new technologies students could use to access their funds. Since technology in this field is advancing rapidly, we were also concerned that the terminology could become outdated unless it referred to financial tools broadly. To address these concerns, the proposals that we circulated during negotiated rulemaking referred to ''access devices'' in conjunction with a prepaid card or debit card. However, to simplify the regulations, we simply define and use the term access device to mean both prepaid cards and debit cards. It is our intent to include new technologies in this definition, such as digital wallets and other technological advances that may emerge, so that we do not need to amend the regulations by listing the specific types of tools students may use to access their accounts.

Depository Account

Proposed Regulations: We propose to add the term ''depository account'' and to define it as ''an account at a depository institution described in 12 U.S.C. 461(b)(1)(A),[29] or an account maintained by a foreign institution at a comparable depository institution that meets the requirements of § 668.163(a)(1).''

Reasons: If used alone in these proposed regulations, the term ''account'' could refer to a student's or parent's account at a financial institution, a student's account at an institution of higher education, or an institutional bank account into which the Secretary transfers title IV funds. For clarity, we qualify the term to differentiate these uses. The term ''depository account'' refers to an account maintained by the institution into which the Secretary deposits title IV funds requested by the school. During the second session of negotiations, some of the non-Federal negotiators suggested including the term ''depository account'' to clarify that an account does not need to be held at an institution organized as a ''bank.'' [30] We agreed with these negotiators, and added this definition to clarify that we are referring accounts held at banks, credit unions, and other institutions that meet the statutory definition of a ''depository institution.'' The proposal in these regulations contains the same definition that was presented during the fourth session of negotiations.

EFT (Electronic Funds Transfer (EFT))

Proposed Regulations: We propose to add the term ''EFT'' and to define it as ''a transaction initiated electronically instructing the crediting or debiting of a financial account, or an institution's depository account. For purposes of

[25] 61 FR 60603 (November 29, 1996).

[26] 72 FR 62028 (November 1, 2007).

[27] 59 FR 22441 (April 29, 1994).

[28] As discussed elsewhere, the CFPB has proposed amending its definition of ''access device'' at 12 CFR 1005.2 to include prepaid accounts, but a final rule has not yet been issued.

[29] Section 19(b)(1)(A) of the Federal Reserve Act.

[30] Kundert and Levandowski. Memo to Negotiated Rulemaking Committee. [Page 2] (2014), available at *www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii2-kl4-draftlanguagechgs.pdf.*

transactions initiated by the Secretary, the term ''EFT'' includes all transactions covered by 31 CFR 208.2(f). For purposes of transactions initiated by or on behalf of an institution, the term ''EFT'' includes, from among the transactions covered by 31 CFR 208.2(f), only Automated Clearinghouse transactions.''

Reasons: In general, the Department is required to make payments by EFT. See 31 CFR 208.1. For purposes of that requirement, the definition of EFT is ''any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account,'' and it provides a non-exhaustive list of the types of transactions covered, including, but not limited to, Automated Clearing House transactions. See 31 CFR 208.2(f). The proposed definition adopts 31 CFR 208.2(f) for purposes of transactions initiated by the Secretary, but in order to facilitate compliance with other applicable Treasury regulations, including 31 CFR 210.5,[31] authorizes only Automated Clearing House transactions for payments initiated by or on behalf of institutions.

Financial Account

Proposed Regulations: We propose to add the term ''financial account'' and to define a financial account as ''a student's or parent's checking or savings account, prepaid card account, or other consumer asset account held directly or indirectly by a financial institution.''

Reasons: Instead of delineating all of the different account types of accounts that a student or parent may open to receive title IV, HEA program funds, we believe that using a single term simplifies the regulations.

Financial Institution

Proposed Regulations: We propose to add the term ''financial institution'' and to define it as ''a bank, savings association, credit union, or any other person or entity that directly or indirectly holds a financial account belonging to a student or parent that issues an access device associated with a financial account and agrees with a student or parent to provide EFT services.''

Reasons: By defining this term, we will clarify that when we refer to a ''financial institution,'' we mean the entity or entities that directly or indirectly hold, offer or manage the student's or parent's Title IV funds. The term is used in proposed § 668.164(d), (e) and (f) to refer to the entity or entities that enter into card agreements with postsecondary institutions and hold the title IV funds of students and parents who open accounts offered under T1 or T2 arrangements.

Student Ledger Account

Proposed Regulations: We propose to add the term ''student ledger account'' and to define a student ledger account as ''a bookkeeping account maintained by an institution to record the financial transactions pertaining to a student's enrollment at the institution.''

Reasons: As discussed previously, we qualify the term ''account'' to refer to its intended use. For this definition we refer to student accounts maintained on the institution's books reflecting the institution's charges and the students' payments. We note that crediting the student's ledger account marks the date on which a disbursement is made and in cases where the ledger account is credited on or after the first day of class, marks the beginning of the 14-day period for paying credit balances specified in § 668.164(h)(2).

Federal Interest in Title IV, HEA Program Funds and Standard of Conduct (§ 668.161(b)–(c))

Current Regulations: Current § 668.161(b) provides that title IV, HEA program funds received by an institution are held in trust for the intended student beneficiaries, the Secretary, or lender or guaranty agency under the FFEL programs. The institution, as a trustee of Federal funds, may not use or hypothecate title IV, HEA program funds for any other purpose.

Under current § 668.163(e), an institution must exercise the level of care and diligence required of a fiduciary with regard to maintaining and investing title IV, HEA program funds.

Proposed Regulations: Proposed § 668.161(b) removes the reference to a lender or guaranty agency under the FFEL programs and provides that an institution may not engage in any practice that risks the loss of title IV, HEA program funds.

We relocate the current standard of conduct provisions in § 668.163(e) to proposed § 668.161(c), and revise § 668.161(b) of these regulations to specify that an institution must exercise the level of care and diligence required of a fiduciary with regard to managing title IV, HEA program funds.

Reasons: Currently, institutions that seek to maximize the earnings on funds that would otherwise remain idle in one or more of their operating or depository accounts enter into arrangements where all or part of the funds in those accounts are swept overnight into savings accounts, money market mutual funds, or other securities. While it is outside of the scope of these regulations to limit how an institution chooses to invest or manage its own funds, we do not believe that an institution should sweep title IV, HEA program funds.[32] So, to the extent that an institution's operating or depository accounts contain title IV, HEA program funds, the institution must ensure that those funds are not swept or otherwise placed at risk of financial loss. By removing the provision for investing title IV funds, and prohibiting practices that risk loss of those funds, the Department intends to preclude risky management practices, including sweeps containing title IV funds.

We acknowledge that some sweep accounts are relatively risk free; however, other sweep accounts or investment vehicles may subject funds to losses, liens, or other attachments. Although we could attempt to differentiate between the two or define a safe investment account, we see no reason to do so. Under the current § 668.163(c)(4) that governs interest-bearing accounts, an institution must return to the Secretary any interest earnings over $250. Under proposed § 668.163(c), an institution must return any interest earnings over $500. Therefore, unlike the situation where an institution invests its own funds, there is no incentive to maximize earnings because the amount of earnings that an institution may retain is insignificant. As a trustee of Federal funds, the institution must ensure that all of the title IV, HEA program funds it receives from the Secretary remain unencumbered and delivered timely to students and parents that qualify for those funds.

We believe that relocating the standard of conduct provisions to the scope and institutional responsibility section of the proposed regulations is appropriate because an institution must exercise the level of care and diligence

[31] 31 CFR 210.5 includes requirements for accounts into which Federal payments are made and includes provisions relating to account insurance and compliance with the Electronic Funds Transfer Act, among other requirements.

[32] The term ''sweep'' as customarily used in the financial services sector refers to the practice of automatically transferring funds in excess of a preset amount into an account or other investment vehicle with the potential to earn a higher rate of return. This practice is designed to earn higher returns on otherwise idle funds, but may subject those funds to a higher risk of investment loss.

required of a fiduciary in managing title IV, HEA program funds under these proposed regulations.

Payment Methods Generally (§ 668.162)

Current Regulations: Current § 668.162(a) specifies that the Secretary may provide title IV, HEA program funds to an institution under one of the following payment methods: Advance, reimbursement, just-in-time, or cash monitoring. Section 668.162(c) describes the just-in-time payment method.

Under § 668.166(a)(2), the provisions governing excess cash do not apply to an institution that receives title IV, HEA program funds under the just-in-time payment method.

Proposed Regulations: Proposed § 668.162(a) removes the reference to the just-in-time payment method, and changes the name of the cash monitoring payment method to the ''heightened cash monitoring payment method.'' We are also proposing to remove current § 668.162(c), which describes the just-in-time payment method. In addition, we propose to make a corresponding change to the excess cash regulations in § 668.166(a) by removing the reference to the just-in-time payment method.

Reasons: Other than a few institutions that last piloted the just-in-time payment method in 2010, the Department does not use this payment method, and does not intend to do so because the advance payment method, as currently implemented, is sufficient to meet institutional and Department needs.

Reimbursement and Cash Monitoring Payment Methods (§ 668.162(c)–(d))

Current Regulations: Current § 668.162(d)(1) specifies that under the reimbursement payment method an institution must first make disbursements to students and parents for the amount those students and parents are eligible to receive under the Federal Pell Grant, TEACH Grant, Direct Loan, and campus-based programs before the institution may seek reimbursement from the Secretary for those disbursements. The Secretary considers an institution to have made a disbursement once it has credited the student's account or paid the student or parent directly with its own funds. Paragraphs (d)(2) through (d)(4) of this section describe the procedures an institution must follow and the documentation the institution must provide in submitting a reimbursement request, as well as the conditions the documentation must satisfy to support the request.

Similarly, the current provisions governing the cash monitoring payment method under § 668.162(e) specify that an institution must first make disbursements to students and parents for the amount of title IV, HEA program funds those students and parents are eligible to receive before the institution seeks reimbursement from the Secretary for those funds. Under paragraph (e)(2) of this section, an institution seeks reimbursement by following the procedures under the reimbursement payment method, except that the Secretary may modify the documentation requirements and review procedures used to approve the reimbursement request.

Current § 668.164(e) requires that whenever the amount of title IV, HEA program funds credited to a student's account exceeds the amount of tuition and fees, room and board, and other authorized charges assessed the student, the institution must pay the resulting credit balance directly to the student or parent within a 14-day timeframe.

Proposed Regulations: Proposed § 668.162(c) specifies that an institution must first credit a student's ledger account for the amount of title IV, HEA program funds the student or parent is eligible to receive, and pay the amount of any credit balance due under proposed § 668.164(h), before the institution seeks reimbursement from the Secretary for those funds. In addition, proposed § 668.164(c)(3) requires an institution to submit, with its request for reimbursement, documentation that the institution paid directly to students or parents any credit balances that were due under proposed § 668.164(h).

Similarly, under the heightened cash monitoring payment method in proposed § 668.162(d), an institution must first credit a student's ledger account for the amount of title IV, HEA program funds the student or parent is eligible to receive, and pay any credit balance due under proposed § 668.164(h), before the institution seeks reimbursement from the Secretary for those funds.

Reasons: The credit balance provisions in the current regulations and these proposed regulations specify a 14-day timeframe within which an institution must pay a credit balance directly to a student or parent. The 14-day timeframe applies regardless of the payment method under which the Secretary provides title IV, HEA program funds to an institution. However, under the reimbursement and heightened cash monitoring payment methods, an institution must first pay title IV, HEA program funds for the amount that a student or parent is eligible to receive before the institution seeks reimbursement from the Department for those funds. Therefore, the institution may not include in its reimbursement request any student or parent for whom a credit balance was due but not yet paid. In the context of a program review, audit, or other enforcement action, the issue of whether the institution complied with the 14-day timeframe depends on the date the institution credits the student's ledger account with title IV, HEA program funds and the date it pays the credit balance; however, for seeking reimbursement, it does not matter when the credit balance was paid, only that it was paid.

The current provisions under which the Department determines whether to approve a reimbursement request do not specify that an institution must submit documentation showing that it paid the credit balances that are due to students and parents. These proposed regulations make explicit that an institution placed on the reimbursement payment method or heightened cash monitoring payment method under § 668.162(d)(2) must demonstrate in accordance with procedures established by the Secretary that it paid directly to students and parents the credit balances that are included in its request for reimbursement before the Department will consider that request. For an institution placed on the heightened cash monitoring payment method under § 668.162(b)(1), the institution must maintain documentation showing that it paid any required credit balances directly to students and parents before it initiates a request for funds that includes those students and parents.

Maintaining Title IV, HEA Program Funds in an Institutional Depository Account (§ 668.163(a))

Current Regulations: Current § 668.163(a)(1) specifies that an institution must maintain title IV, HEA program funds in a bank or investment account that is Federally insured or secured by collateral of value reasonably equivalent to the amount of those funds.

Proposed Regulations: Proposed § 668.163(a)(1) requires an institution to maintain title IV, HEA program funds in a depository account. For an institution located in a State, the depository account must be insured by the FDIC or National Credit Union Administration (NCUA). For a foreign institution, the depository account may be insured by the FDIC or NCUA, or by an equivalent agency of the government of the country in which the institution is located. If there is no equivalent agency, the

Secretary may approve a depository account designated by the foreign institution.

Reasons: We do not see any value in continuing to allow institutions located in a State to maintain title IV, HEA program funds in non-insured accounts. As discussed more fully under the heading ''Interest-bearing accounts'' this proposal is consistent with OMB guidance in 2 CFR 200.305(b)(7)(ii), which provides that ''advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.'' In view of the rigorous regulatory requirements that financial institutions must satisfy before their depository accounts are insured by the FDIC or NCUA, and the FDIC and NCUA oversight over those financial institutions, we believe this requirement will help ensure that Federal funds are not put at undue risk of loss.

In addition, because the current regulations do not address the accounts into which foreign institutions must maintain Direct Loan program funds, we propose to apply the same requirements, to the extent possible, to those institutions—a depository account that is insured by the FDIC, NCUA, or by an equivalent agency of the government where the institution is located. We recognize, however, that there may be instances where there is no equivalent agency, so these proposed regulations would permit the Secretary to approve a bank account designated by the foreign institution.

Interest-Bearing Bank Account (§ 668.163(c))

Current Regulations: Current § 668.163(c)(1) requires an institution to maintain the fund described in § 674.8(a) of the Federal Perkins Loan program regulations (the Fund) in an interest-bearing bank account or investment account consisting predominately of low-risk, income-producing securities, such as obligations issued or guaranteed by the United States.[33] Any interest or income earned on Federal Perkins Loan funds are retained by the institution as part of the Fund. Under paragraph (c)(3) of this section, an institution does not have to maintain other title IV, HEA program funds in an interest-bearing account if (1) the institution drew down less than $3 million in the prior award year and anticipates that it will not draw down more than that amount in the current award year, (2) the institution demonstrates by its cash management practices that it will not earn over $250 on those funds during the award year, or (3) the institution requests funds under the just-in-time payment method. In addition, except for interest earned on Federal Perkins Loan funds and retained in the Fund, an institution may keep up to $250 in interest earnings, but must remit to the Secretary by June 30 of the award year any interest earnings over $250.

Proposed Regulations: Proposed § 668.163(c) adopts by reference the guidance in 2 CFR part 200, issued by OMB on December 26, 2013, entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Section 200.305(b)(8) states:

(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply.

(i) The non-Federal entity receives less than $120,000 in Federal awards per year.

(ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of $500 per year on Federal cash balances.

(iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(iv) A foreign government or banking system prohibits or precludes interest-bearing accounts.

Section 200.305(b)(9) states:

(9) Interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $500 per year may be retained by the non-Federal entity for administrative expenses.

Reasons: The current interest-bearing account provisions were largely based on OMB guidance in effect at the time we published the initial cash management regulations in November 1996. These proposed regulations are consistent with updated OMB guidance.

Disbursements by Payment Period (§ 668.164(b))

Current Regulations: In general, current § 668.164(b)(1) and (2) provide that, except for paying a student under the Federal Work Study (FWS) program, an institution must disburse title IV, HEA program funds on a payment-period basis. More specifically, unless any of the disbursement provisions governing the Direct Loan program now found under 34 CFR 685.303(d) apply, or the institution chooses to make more than one disbursement in a payment period for Federal Perkins Loan, Federal Pell Grant, the institution must disburse the title IV, HEA program funds that a student or parent is eligible to receive at least once each payment period.

Current § 668.164(b)(3) provides that except for late disbursements, an institution may disburse title IV, HEA program funds to a student or parent for a payment period only if the student is enrolled for classes for that payment period and is eligible to receive those funds.

Under § 668.2, a third-party servicer is defined as an organization, person, or State that enters into a contract with an eligible institution to administer any aspect of the institution's participation in any title IV, HEA program. This includes performing any function required by statute or regulation, or any arrangement, agreement, or limitation entered into under the authority of statutes applicable to title IV of the HEA, such as, but not limited to, *e.g.,* receiving, disbursing, or delivering title IV, HEA program funds, preparing and certifying requests for funds under the advance or reimbursement payment methods, determining student eligibility and related activities, preparing applications, and other functions noted in paragraph (i) of the definition.

Current § 668.25 provides, in part, that in a contract with an institution, a third-party servicer must (1) comply with all statutory provisions of or applicable to title IV of the HEA, and all regulatory provisions prescribed under that statutory authority; (2) report to the OIG for investigation any information indicating there is a reasonable cause to believe that the institution may have engaged in fraud or other criminal misconduct in connection with administering the title IV, HEA programs, (3) be jointly and severally liable with the institution to the Secretary for any violation by the servicer of any statutory or regulatory provision of or applicable to title IV of the HEA, and (4) if the servicer disburses title IV, HEA program funds to a student, confirm the eligibility of the student before making that disbursement, where the confirmation must include but is not limited to any applicable information contained in the records required under § 668.24.

Proposed Regulations: Proposed § 668.164(b)(1) and (2) specify that, except for paying a student under the FWS program, for making prior-year,

[33] We note that under section 461(b)(1) of the HEA, the authority for schools to make a Federal Perkins Loan ended on September 30, 2014, with an automatic one-year extension pursuant to section 422(a) of the General Education Provisions Act. Absent congressional action, the program will be wound down, and the Department will provide instructions to institutions currently participating in the program as to, for example, the disposition of Perkins Loan Program revolving funds.

late, or retroactive disbursements, or unless any of the disbursement provisions governing the Direct Loan program now found under 34 CFR 685.303(d) apply, an institution must disburse during a payment period the amount of title IV, HEA program funds that an enrolled student, or the student's parent, is eligible to receive for that payment period.

Proposed § 668.164(b)(3) provides that at the time that a disbursement is made for a payment period, the institution, along with the third-party servicer engaged by the institution to draw down title IV, HEA program funds or otherwise perform activities leading to or supporting that disbursement, must confirm that the student is enrolled at the institution, and that the student, or the student's parent, is eligible for that disbursement.

Reasons: We wish to clarify the current requirement that, except for the cited circumstances, an institution must disburse title IV, HEA program funds on a payment-period basis by specifying that the institution must disburse during a payment period all of the funds that a student or parent is eligible to receive for that payment period. This requirement, along with the proposed provisions under § 668.164(c) and (h) that require an institution to credit a student's ledger account to pay only for charges associated with a payment period, helps ensure that students and parents receive their credit balance funds on a timely basis.

In program reviews of several institutions and third-party servicers, the Department found that neither the institution nor the servicer confirmed that students were eligible to receive title IV, HEA program funds before disbursements were made to those students. Under the contracts between these institutions and servicers, the servicers would perform a wide range of activities on behalf of the institutions including packaging aid awards, drawing down or requesting title IV funds, accounting for funds, and submitting data or reports to the Department. However, the contracts used the phrases ''make arrangements for disbursements,'' ''intercept disbursement requests,'' and ''process awards including [the] preparation of disbursement journals'' to apparently refer to a process where the servicer would provide the institution a list of the students and the amounts of their aid awards, and the institution would then credit the students' ledger accounts for those amounts, presumably after confirming the eligibility of those students. But those confirmations were either not performed or not performed adequately, in part, because the procedures under which the institution was expected to confirm the eligibility of its students were lacking or not documented. Nevertheless, the servicers accepted at face value that the institution confirmed eligibility when it disbursed title IV, HEA program funds by crediting the students' ledger accounts, and reported those disbursements to the Department as valid payments made to those students.

The Department finds it incongruous that a servicer who essentially controls the entire process for making awards to students would carve out in its contract with an institution the most fundamental aspect of the administering the title IV aid programs—that disbursements are made only to eligible students. Nevertheless, because the third-party servicer is bound by the same provisions that apply to an institution, the servicer must carry out its contracted activities in a manner keeping with a fiduciary under the title IV, HEA programs. In this regard, the servicer cannot feign ignorance over what the institution did or did not do in confirming eligibility. To the extent that the servicer relies on information provided by the institution that leads to or supports a disbursement, is used in determining the amount of funds to draw down for eligible students, or subsequently used for reporting valid disbursements to the Department, the servicer, along with the institution, is responsible for the veracity of that information. In the program reviews, the findings could have been ameliorated if the parties established and agreed to a documented process under which the institution would confirm eligibility and the servicer would verify periodically that the confirmations were made in accordance with that process.

We wish to emphasize that our proposed language holding an institution and its third-party servicer responsible for confirming a student's eligibility is not new policy or a change in policy—it merely emphasizes current requirements and reiterates institutional and servicer responsibilities.

Crediting a Student's Ledger Account (§ 668.164(c), (h))

Current Regulations: Under current § 668.164(d), an institution may, without obtaining the student's or parent's authorization, use title IV, HEA program funds to credit a student's account at the institution to satisfy (1) current year charges for tuition and fees and, if the student contracts with the institution for those services, for room and board, and (2) prior year charges for tuition, fees, room, or board. In addition, if the institution obtains the student's or parent's authorization, it may credit the student's account with title IV, HEA program funds to satisfy other current year and prior-year educational charges incurred by the student at the institution. However, § 668.164(d)(2) limits the amount of current year title IV, HEA program funds that may be used to satisfy prior-year charges to $200.

Current § 668.164(e) provides that whenever an institution disburses title IV, HEA program funds by crediting a student's account and the total amount of those funds exceeds the amount of tuition and fees, room and board, and other authorized charges the institution assessed the student, the institution must pay the resulting credit balance directly to the student or parent as soon as possible but no later than (1) 14 days after the balance occurred, if the credit balance occurred after the first day of class of a payment period, or (2) 14 days after the first day of class of a payment period, if the credit balance occurred on or before the first day of class of that payment period.

Proposed Regulations: Proposed § 668.164(c)(1) specifies that an institution may credit a student's ledger account with title IV, HEA program funds to pay for allowable charges associated with the current payment period. Allowable charges are (1) the amount of tuition, fees, and institutionally-provided room and board charges assessed the student for the payment period, or the prorated amount of those charges if the institution debits the student's ledger account for more than charges associated with the payment period, and (2) the costs incurred by the student for the payment period for purchasing book, supplies, and other educationally-related goods and services provided by the institution for which the institution obtains the student's or parent's authorization.

Proposed § 668.164(c)(2) provides that, if an institution includes the cost of books and supplies as part of the amount it charges for tuition and fees, the institution must disclose those costs separately and explain why including them is in the student's best financial interests.

Proposed § 668.164(c)(3) specifies that an institution may include, in a payment period for the current year, prior-year charges of not more than $200 for (1) tuition, fees, and institutionally-provided room and board without obtaining a student's or parent's authorization, and (2) educationally related goods and services provided by the institution for which the institution obtains the student's or parent's

authorization. The ''current year'' is defined as the current loan period for a student or parent who receives a Direct Loan, or the current award year for a student who does not receive a Direct Loan. A ''prior year'' is defined as any loan period or award year prior to the current loan period or award year, as applicable.

Under proposed § 668.164(c)(4), an institution may include in the current payment period allowable charges stemming from any previous payment period in the current year for which the student is eligible, if the student was not already paid for that previous payment period.

If an institution debits a student's ledger account for the entire cost of a program or otherwise debits the ledger account for more than the charges associated with the payment period, proposed § 668.164(c)(5) requires the institution to determine the prorated amount of charges for the payment period by (1) for a program that has substantially equal payment periods, dividing the total amount of institutional charges for the program by the number of payment periods in the program, or (2) for any other program, dividing the number of credit or clock hours the student enrolls in or is expected to complete in the current payment period by the total number of credit or clock hours in the program and multiplying that result by the total institutional charges for the program.

Under proposed § 668.164(h)(1), a title IV, HEA program credit balance occurs whenever the amount of title IV, HEA program funds credited to a student's ledger account for a payment period exceeds the amount of allowable charges associated with that payment period. Proposed § 668.164(h)(2) maintains the same 14-day credit balance payment timeframes as the current regulations.

Reasons: By prorating institutional charges to the amount associated with a payment period, and specifying that a credit balance occurs whenever the amount of title IV, HEA program funds exceeds the prorated amount of charges, the Department aims to correct a situation where credit balance funds that would be used to pay for living expenses and other education-related costs are not paid to the student or parent until after the first payment period. For example, a student who attends an institution that charges $8,000 for a year-long program (which includes two payment periods) receives $5,000 of title IV, HEA program funds per payment period, or $10,000 per year. Currently the institution may debit the student's ledger account for $8,000 in the first payment period, the full cost of the program, and then credit the account for only $5,000, the amount of title IV, HEA program funds the student is eligible to receive for the first payment period. The student would not receive a credit balance until several months later when the institution credits the student's ledger account during the second payment period with another $5,000, because only at that point the total amount of title IV, HEA program funds exceed institutional charges (by $2,000). Under this proposal, the institution would only be able to charge a prorated amount of $4,000 during each payment period, so the student or parent would receive a credit balance of $1,000 during the first payment period and another $1,000 during the second payment period. In this example, the prorated amount of institutional charges associated with a payment period is $4,000 (the total amount of institutional charges of $8,000 is divided by two, the number of payment periods in the program). We note that the vast majority of institutions, particularly those that are term-based, already charge on a term or payment period basis, so this proposed change in the regulations will have no impact on those institutions. The Department seeks comment on whether the proposed methods for prorating institutional charges under § 668.164(c)(5) are appropriate.

With regard to the definitions in proposed § 668.164(c)(3), we seek to codify in regulations the meaning of the terms ''current year'' and ''prior year'' that were previously used in guidance issued on September 8, 2009, in Dear Colleague Letter GEN–09–11.

In cases where institutions include the costs of required books and supplies as part of the total amount of tuition and fee charges, relevant information about those materials and the cost charged by institutions for those materials is not frequently provided to students. This practice effectively prevents students from purchasing required materials elsewhere for a lower price. For this reason, and based on findings by State attorneys general that some institutions required students to purchase books and supplies directly from them at grossly inflated prices, we proposed during negotiated rulemaking to prohibit institutions from including books and supplies as part of tuition and fees. However, some of the non-Federal negotiators noted that institutions are increasingly developing course-specific or course-embedded materials for pedagogical or safety reasons.[34] The negotiators argued that because these materials are part and parcel of the course, they would typically not be available as separate items in the public domain. For this reason, the non-Federal negotiators believed the Department's proposal would dampen innovative or safety-related efforts by institutions.

The Department is persuaded there are valid reasons for including some books and supplies as part of tuition and fees. While we acknowledge that course-embedded materials blur the distinction between tuition and fees and books and supplies, we continue to believe that where required books and supplies are separate items available for purchase in the marketplace, those books and supplies should generally not be included as part of tuition and fees. Indeed, section 472 of the HEA, regarding ''costs of attendance,'' treats books and supplies as separate from tuition and fees; and under other provisions (*e.g.,* section 401(e) of the HEA), payments made by crediting the student's account are limited to tuition and fees and room and board, absent student consent. However, under the proposed regulations, an institution may include the costs of books and supplies as part of tuition and fees only if it separately discloses the costs of those items and explains why including them is in the student's best financial interest; that is, the institution is providing the books and supplies at or below market costs, or providing materials not otherwise generally available for purchase by the public. To the extent that an institution includes course-embedded materials as part of tuition and fees, the institution must separately disclose the cost of accessing those materials and explain why it is in the student's best financial interest to do so. For example, an institution may disclose that it charges students a $100 fee for accessing course material that replaces a book that typically sells for $400. We specifically invite comment on how and when an institution should make these disclosures.

Payments by the Secretary (§ 668.164(d)(3))

Current Regulations: Under current § 668.164(a)(1), an institution is responsible for disbursing title IV, HEA program funds to a student or parent,

[34] During negotiations, non-Federal negotiators cited various examples of these types of materials, especially in cases where uniformity was required for learning or safety and health reasons, such as the type of instruments used in a cosmetology or culinary program.

including paying a credit balance directly to the student or parent.

Proposed Regulations: Proposed § 668.164(d)(3) specifies that the Secretary may pay directly to students and parents any credit balances due under § 668.164(h), and the disbursement of title IV funds (up to the credit balance amount) for books and supplies under § 668.164(m), using an alternative method established or authorized by the Secretary and published in the **Federal Register**. Alternative methods include making direct payments to prepaid or debit cards sponsored by the Department or another Federal agency.

Reasons: We recognize the growing popularity of electronic banking as evidenced by the increasing numbers of students and their parents who receive their title IV, HEA credit balances via direct deposit to their financial accounts. We are also aware that a number of government benefits are distributed to recipients via prepaid government debit cards. For example, Treasury's Direct Express® prepaid debit card program is used to distribute Social Security and other Federal benefits to over 5 million beneficiaries. At this time, the Department is not establishing a debit or prepaid card for direct payments of title IV, HEA funds; however, we will continue to explore whether such a card would be beneficial to students and parents. If the use of a government-issued debit or prepaid card shows the potential of savings in costs and other efficiencies for students, their parents, and the government, the Secretary may wish to establish such a card and make it available for the direct payments of title IV, HEA credit balances.

Designation as a Tier One (T1) Arrangement or a Tier Two (T2) Arrangement (§ 668.164(e)(1) and § 668.164(f)(1)–(3)) [35]

Current Regulations: Current § 668.164(c)(3) states that an institution may establish a policy requiring its students to provide bank account information or open an account at a bank of their choosing as long as this policy does not delay disbursement of title IV, HEA program funds to students. If the institution opens a bank account on behalf of a student or parent, establishes a process the student or parent follows to open a bank account, or similarly assists the student or parent in opening a bank account, the institution must comply with the bank account provisions specified in § 668.164(c)(2)(i) through (vii).

Proposed Regulations: The provisions of § 668.164(d)(4), (e), and (f) apply to arrangements between an institution and a third-party servicer, and between an institution and a financial institution.

Proposed § 668.164(e)(1) specifies that in a T1 arrangement, an institution has a contract with a third-party servicer under which the servicer performs one or more of the functions associated with processing direct payments of title IV, HEA program funds on behalf of the institution to one or more financial accounts that are offered under the contract or by the third-party servicer, or by an entity contracting with or affiliated with the third party servicer to students and their parents.

Proposed § 668.164(f)(1) specifies that in a T2 arrangement, an institution has a contract with a financial institution or entity that offers financial accounts through a financial institution, under which financial accounts are offered and marketed directly to students or their parents.

Proposed § 668.164(f)(2) provides that the Secretary presumes that title IV, HEA program funds are deposited or transferred into the financial accounts offered and marketed under § 668.164(f)(1). However, the institution does not have to comply with the requirements described in § 668.164(f)(4) if it documents that, for the most recently completed award year, no student or parent received a credit balance.

Proposed § 668.164(f)(3) explains that a financial account is ''directly marketed to students and their parents'' in three situations: (1) The institution communicates information directly to its students or their parents about the financial account and how it may be opened; (2) the financial account or access device is co-branded with the institution's name, logo, mascot, or other affiliation; and (3) a card or tool that is provided to the student or parent for institutional purposes, such as a student ID card, is linked with the financial account or access device.

Reasons: Over the past several years, institutions of higher education have entered into arrangements with financial institutions and nonbank entities to offer students a variety of debit and prepaid cards to receive title IV credit balance disbursements. Institutions have also begun to rely on third-party servicers to handle the administrative operations of their aid disbursement processes. In many cases, these third-party servicers provide both student financial and institutional administrative services. The institution benefits from these arrangements, either in the form of remuneration, receiving reduced-price or free administrative services, or in reduced institutional costs.

As the incidence of these types of agreements has increased, so too has the scrutiny of the practices associated with them. In the past few years, USPIRG, Consumers Union, GAO, and OIG have conducted reviews into the college card marketplace and released reports detailing their findings and recommendations. A number of the findings in these reports are troubling, and the reports lay out recommendations for Department action that are explained in more fully in each of the relevant sections of this preamble, along with explanations of the provisions designed to address these findings. This section discusses a threshold issue—the types of arrangements that are subject to the proposed regulations.

During negotiated rulemaking, the committee spent a significant amount of time trying to identify which financial accounts would be considered ''sponsored,'' or endorsed by the institution. After multiple negotiating sessions, the Department's final proposal in the negotiations included the term ''sponsored account,'' which was defined as an account, access device, card (including student ID), or other tool that:

(1) Is specified or included in a contract between the institution and an entity,

(2) Is offered to a student (or parent) enrolled at the institution, and

(3) May be used by the student (or parent) to receive title IV funds.

This definition encompasses a variety of possible accounts. While the student advocates supported this definition, banking sector representatives opposed the definition, arguing that it was (1) overly broad and applicable to accounts that are outside the scope of the Department's interest in regulating the delivery of title IV aid, and (2) too vague as to what which accounts would fall under the definition. We acknowledge the concerns raised by banking industry representatives, so have tailored the proposed rules based on the circumstances in which the troubling practices have occurred.

In describing the questionable practices of the college card market, a consensus emerged from the consumer

[35] These sections appear in the proposed regulations after § 668.164(d)(4), which primarily discusses direct payments made pursuant to a student choice process established for institutions with T1 or T2 arrangements. We have elected to discuss § 668.164(e)(1) and § 668.164(f)(1)–(3) first, to detail what T1 and T2 arrangements are and our reasons for designating them as such. We believe ordering the preamble in this way will make the discussion of § 668.164(d)(4) easier to understand.

and government reports: Not all arrangements resulted in equivalent levels of troubling behavior, largely because the financial entities and third-party servicers with which institutions contract face divergent monetary incentives.

Banks and credit unions have an incentive to create long-term relationships with college students—a potentially lucrative future cohort—at the time when those students have not yet established a relationship with a bank.[36] Banks may not necessarily rely on short-term fee income when providing products to students, because banks may be seeking to establish a customer base that will be profitable over the long term when those students secure mortgages, auto loans, or other types of consumer credit.

Other financial institutions, including, but not necessarily limited to, non-bank firms (such as third-party servicers), ''may have different incentives for pursuing relationships with students.'' [37] These entities have a different type of business model, and are more likely to ''seek to partner with schools to provide fee-based services to both the institution and the student.'' [38] This is primarily a relationship with the student that ends once the student is no longer enrolled, and ''the nature of this short-term interaction creates an incentive to increase fee revenue over what traditional banks might charge.'' [39] As a result, there has been a proliferation of uncommon, difficult to understand, and oftentimes unreasonable fees assessed by such providers against accounts with credit balances. Moreover, by their nature as servicers handling the duties of the institutions, they ''can take over all aspects of the disbursement process from schools.'' [40] As a result, these third-party servicers can determine the way that the college card is portrayed to students, establish different timeframes for electronic delivery of credit balances based on how the student electronically receives funds, and access personal student information for targeted marketing purposes.

Ordinarily, an institution's incentive to agree to assessing high fees against students might be offset by its interest in protecting its students from the loss of significant financial assistance. However, colleges also have strong incentives to establish arrangements that provide for fee revenue (which ultimately benefits the institution in the form of remuneration or reduced-cost services from the third-party servicer). ''Schools are searching for ways to make their services more cost effective and increase revenues,'' and one increasingly common way of reducing costs is by hiring a third-party servicer to handle the administration of the student aid disbursement process.[41] Institutions have stated that employing a third-party servicer provides a more efficient credit balance delivery method than delivering checks; they have also acknowledged that, ''during difficult budget times, this option was cost effective.'' [42] By valuing agreements that are more likely to prioritize short-term fee-based revenue, many institutions have created a situation where the best financial interests of students may not be the primary consideration.

These incentive structures have led to a number of troubling practices. OIG found that schools relinquished ''significant control'' over the title IV aid disbursement process and relied on servicer compliance to meet title IV regulations. ''However, the schools did not appear to routinely monitor all servicer activities related to this contracted function, including compliance with all title IV regulations and student complaints.'' [43] OIG also determined that, after student identifiers and credit balance disbursement figures were provided to servicers, ''the schools did not adequately oversee the servicers' activities to ensure that policies were followed, continued to be in the best interests of students, and complied with program requirements.'' [44] OIG determined that ''the Department should take action to better ensure that student interests are served when schools use servicers to deliver credit balances.'' [45]

Third-party servicers' practices have also led to legal action. In August 2012, FDIC announced settlements with Higher One and one of its former bank partners, Bancorp Bank, after alleging ''unfair and deceptive practices'' relating to the manner in which it charged fees and other practices. Specifically, the FDIC alleged that the two firms violated the Federal Trade Commission Act by ''charging student account holders multiple insufficient funds fees from a single transaction; allowing accounts to remain in overdrawn status for long periods and allowing these insufficient funds fees to continue accruing; and collecting the fees from subsequent deposits to the students' accounts, typically funds for tuition and other college expenses.'' [46] [47] Furthermore, in November 2013, Higher One announced it had agreed in principle to settle a class action lawsuit for $15 million. In that action, student plaintiffs claimed that Higher One misled them ''by marketing its debit card as schools' preferred method for making financial aid and other payments, improperly steered them into depositing funds into Higher One accounts, and charged excessive and inadequately disclosed ATM and PIN fees.'' Higher One and its banking partners (Bancorp Bank and Wright Express Financial Services Corporation) that were named as co-defendants disclaimed wrongdoing.[48]

We believe that absent targeted provisions addressing specific concerns, and especially because students are a captive audience to institutional marketing, students will continue to be subject to the troubling practices identified by government agencies and consumer groups. For these reasons, we propose to designate as ''tier 1'' those arrangements between an institution and a third-party servicer under which the servicer performs one or more of the functions associated with processing direct payments of title IV, HEA program funds for the institution, and offers accounts to students and parents. Institutions entering into such arrangements would be responsible for ensuring that accounts offered by third-party servicers comply with both the fee requirements and disclosure requirements of the regulations.

As explained above, in contrast to third-party servicers, traditional financial institutions and entities that offer financial accounts through a financial institution that do not engage in third-party servicing functions have stronger incentives to provide student-friendly accounts and convince students to become long-term customers.[49] Many such providers of student bank accounts or campus cards do not charge fees ''higher than those associated with other banking products available to students.'' [50] While financial institutions not employed in a third-

[36] Consumers Union at 5.

[37] Ibid.

[38] USPIRG at 13.

[39] Ibid.

[40] USPIRG at 13.

[41] Ibid.

[42] NACUBO at 2.

[43] OIG at 5.

[44] Ibid. at 7.

[45] Ibid. at 5.

[46] GAO at 24.

[47] FDIC. ''FDIC Announces Settlements With Higher One, Inc., New Haven, Connecticut, and the Bancorp Bank, Wilmington, Delaware for Unfair and Deceptive Practices.'' [Page 1] (2012), available at *www.fdic.gov/news/news/press/2012/pr12092.html.* With subsequent references ''FDIC at [page number].''

[48] GAO at 25.

[49] Consumers Union at 5.

[50] GAO at 15.

party servicer role were cited in some instances, practices by those firms are generally not as troubling, the agreements generally impose fewer fees on students, and, in some cases, students actually receive better-than-market rates on such accounts. Based on these findings, in the proposed regulations, the fee-related provisions for T1 arrangements do not extend to arrangements not involving a third-party servicer.

However, arrangements between institutions and financial institutions that are not third-party servicers are not without the potential for harm to students. The biggest concern involving these accounts is that the apparent institutional endorsement of a particular financial account has the potential to lead aid recipients to believe that the account in question is required for aid receipt, has been competitively bid and negotiated by the school, or, at a minimum, represents a good deal because it has been endorsed by the institution.

There are multiple ways institutions convey this impression to students.

The most obvious way this occurs is with student IDs. In one-third of schools surveyed by GAO, student IDs, which are distributed to all students, have the capacity to be activated as either a debit or prepaid card.[51] While activating the financial functions of the card is not required, the card itself typically is. In the most troubling circumstances, students are led to believe that activating the financial functions is required.[52] Even in cases where this does not occur, students still must carry a student ID that is effectively an institutionally-sponsored advertisement for the financial provider and may misunderstand which functions are required.[53]

More general co-branding can cause similar confusion. ''Schools can appear to implicitly or explicitly endorse their college cards, by virtue of the relationship with the provider and co-branding of the card. Many students trust their schools and, as a result, may view co-branding as an endorsement and an indication their school has negotiated the best terms for them.'' [54] USPIRG echoed this concern, stating that, ''Many students trust their schools and often think of co-branding as an endorsement. This causes many students to drop their guard, expecting their school has negotiated the best deal for them.'' [55]

Finally, when schools convey the information about a contracted-for financial account directly to students, students listen. ''Card providers and schools market college cards directly to students through various methods, including mailings, on-campus presentations, and co-branded Web sites. Some card providers offer marketing assistance or materials to schools. For example, one provider told us it prefers assisting the school in developing messages, because students pay more attention to the information if it comes from the schools.'' [56]

These direct marketing methods appear to be especially effective. As Rohit Chopra, Student Loan Ombudsman at the CFPB, stated in his presentation to the negotiated rulemaking committee, ''If a certain financial product where the school has a financial interest is chosen as the 'default' choice or implies endorsement of the school, this can lead to mismatched incentives . . . [and] school incentives may impact financial product adoption rates.'' [57]

As GAO has recognized, there are no comprehensive data on the number of students who elect to receive their credit balances on a college card. However, ''the largest provider reported that overall, 43 percent of students receiving financial aid payments at its client schools opened debit accounts.'' [58] Furthermore, GAO found that take-up rates ranged from 20 to 75 percent of participating students at schools that were examined.[59] CFPB, in its request for information relating to college cards, similarly found that adoption rates in such circumstances were high.[60] For many card providers, adoption rates were close to 50 percent of students; some providers' rates exceeded 80 percent.[61] At a minimum, these adoption rates demonstrate that the method of direct marketing employed by institutions, their associated financial institutions, and third-party servicers is particularly effective, but also suggest that students may misunderstand that receiving their financial aid this way is optional. Because institutions are currently not explicitly required to put student and parent interests first in negotiating their marketing agreements, the financial accounts marketed may not have particularly favorable terms or be particularly convenient for students and parents.

On the other hand, direct marketing by financial institutions in itself does not always establish that these accounts impact title IV aid. For example, a financial institution may contract with an institution to offer financial accounts to students in circumstances where no credit balances exist (typically at high-cost institutions), and students are therefore not receiving credit balances into the offered financial accounts. Where such circumstances exist, the integrity of the title IV programs is not at issue.

For this reason, we are limiting our oversight of T2 arrangements to institutions at which students and parents subject to these direct marketing tactics are expected to receive credit balances. Under this approach, if an institution documents that none of its students or parents received a credit balance in the most recently completed award year, it does not have to comply with the restrictions in § 668.164(f) that otherwise apply to financial accounts offered under a T2 arrangement. This approach is appropriate because it allows for the identification of arrangements where no credit balances are expected, while at the same recognizing the remarkable effectiveness of the marketing campaigns in general and the immediate need of students and parents for a place in which to have title IV credit balances deposited.[62]

We invite comment on whether there is a need to establish a minimum threshold of credit balance recipients at an institution before that institution's arrangement would implicate the T2 provisions. We are seeking feedback to determine whether a threshold would be needed to balance burden on institutions and financial institutions against the benefits to students of proposed § 668.164. If a threshold is recommended, we are requesting data and analysis supporting the number chosen.

For the reasons discussed in the preceding paragraphs, we propose to limit the definition of ''T2 arrangements'' to arrangements where students receive credit balances and are

[51] GAO at 9.

[52] OIG at 11.

[53] USPIRG at 21.

[54] GAO at 26.

[55] USPIRG at 21.

[56] GAO at 27.

[57] CFPB presentation at 14–15.

[58] GAO at 12.

[59] Ibid.

[60] Consumer Financial Protection Bureau, Request for Information Regarding Financial Products to Students Enrolled in Institutions of Higher Education (Feb. 2013). With subsequent references ''CFPB RFI.''

[61] Ibid.

[62] This approach reserves an opportunity for an institution having a financial aid history at odds with the presumption to avoid applicability of the restrictions that would otherwise apply under § 668.164(f)(4). The institution would need to maintain its documentation for use in the event of an audit or program review.

subject to direct marketing, either in the form of marketing from the school,[63] or through the implied or direct endorsement of the product via a co-branding of a card or the ability to link an account to a student ID. We emphasize that these proposed regulations govern postsecondary institutions and their arrangements with financial institutions; these limitations narrow the scope of the regulatory requirements to these specific arrangements. As discussed previously, the concerns related to these accounts are not as significant as those involving third-party servicers. Instead, the proposed requirements relating to T2 arrangements are designed to improve the information available to students and parents so they understand their options. The proposed requirements include contractual disclosures and information related to average account holder costs; and for any account listed on the institution's list of credit balance receipt options, disclosure of the accounts fees and terms in an easily understandable format.[64] We believe these disclosure requirements will enable financial providers and institutions with the best financial interests of students in mind to continue offering accounts that are student-friendly and will not result in the loss to aid recipients of critical Federal student aid dollars.

For purposes of clarifying what types of contracts fall under the purview of these proposed regulations, we are also providing the following examples of circumstances which are neither T1 nor T2 arrangements and therefore would not be subject to these proposed regulations if finalized as proposed in this NPRM:

- General marketing of a financial institution that does not specify the kind of account or how it may be opened (*i.e.,* not direct marketing described under § 668.164(f)(3));
- Sponsorship of on-campus facilities with financial institution branding that does not promote particular accounts;
- A lease permitting the operation of an on-campus branch or on-campus ATMs; or
- A list of area financial institutions recommended generally to students for informational purposes rather than being provided pursuant to a contract with the institution.

Finally, many agreements between institutions and financial account providers, including those agreements with monetary benefits for the school, are not clearly disclosed to the consumer or the public. We believe that requiring the disclosure of information relating to the costs to students and benefits provided to schools will encourage market competition.

In sum, we believe that the troubling practices described in various reports and manifested in legal actions demands a regulatory response ensuring student aid recipients are afforded sufficient protections and taxpayer dollars are not put at risk of loss to unreasonable fee-based charges. We believe the most prudent approach is to establish a set of regulatory requirements based on the level of risk to students and taxpayers represented by the type of arrangement between an institution and a third-party servicer or financial institution. Due to the numerous findings and recommendations of consumer and government reports, legal action taken against the predominant third-party servicer in the industry, and because third-party servicers have significant control over the disbursement process, we have determined a higher level of regulatory scrutiny over third-party servicer arrangements is appropriate.

Because student financial accounts offered by financial institutions (and entities that offer financial accounts through a financial institution) that are not third-party servicers do not present as much of a risk to students, we do not believe the same level of scrutiny is necessary for the arrangements between institutions and such entities (based in part on the work Consumers Union did to evaluate student financial account offerings[65]). However, arrangements with these financial institutions that directly market their products to students are not without risk to students and title IV, HEA program funds. By bearing the imprimatur of the school, these providers can circumvent the normal channels of informed consumer choice and have special access to potential customers that distorts the market. Consequently, where the financial account is endorsed or otherwise directly marketed by the institution, the institution must inform students of the fees in a clear, easy-to-understand disclosure format. We believe that ensuring students receive clear information about the financial account will enable them to make a better choice based on the costs and benefits of the individual account, rather than the appearance of an institutional endorsement or a misapprehension about whether the account is a prerequisite for receiving Federal student aid.

We believe this regulatory framework will provide a measured and effective level of consumer protection for those accounts that present the greatest risk to title IV recipients. We also believe the disclosure requirements will provide incentives for institutions and financial institutions to ensure that the financial products marketed are fair to aid recipients. Finally, the recommended delineations between types of arrangements are likely to improve clarity relative to the proposed definitions advanced during negotiations, while ensuring the regulatory requirements are tailored to address the problems identified by consumer groups and government agencies.

Student or parent choice (§ 668.164(d)(4))

Current Regulations: Current § 668.164(c)(1) permits an institution to pay title IV, HEA program funds directly to a student or parent by (1) releasing a check, (2) issuing a check via mail or in-person pickup, (3) initiating an EFT, or (4) dispensing cash. These methods of payment may be used in situations when an institution pays a student (or parent) his or her entire disbursement directly, or, more often, when a credit balance occurs after the institution credits the student's account to cover the cost of tuition and fees, room and board, and other authorized educationally-related institutional charges.

Current § 668.164(c)(3) permits an institution to establish a policy requiring its students to provide bank account information or open an account at a bank of their choosing, but requires the institution to disburse funds via check or cash if the student does not provide this information in a timely manner.

Current § 668.164(c)(3) also requires that, if the institution opens a bank account on behalf of a student or parent

[63] Examples of this include: A recommendation of a particular account offering to students or mailing, emailing, or otherwise directly conveying information about an account to students pursuant to the contract between the institution and financial institution.

[64] To the extent that T2 arrangements permit students to open the accounts outside of the institution's student choice process, our conversations with banking regulators have convinced us that, in view of the lesser degree of access to student information these T2 providers have, existing banking regulations should suffice in providing adequate disclosure of account terms to parents and students opening financial accounts in the traditional manner. For students that do so, they would elect to receive the disbursement to their newly-existing account. For students that do not open an account in this more traditional manner and instead select the account from the student choice menu, these disclosures would be required to be given to students as part of the student choice menu.

[65] Consumers Union at 11–12.

or assists the student or parent in opening a bank account, the institution must obtain in writing affirmative consent from the student or parent to open that account and inform the student or parent of the terms and conditions associated with accepting and using the account before it is opened.

Proposed Regulations: We propose to modify the regulations governing direct payments in two ways. Under proposed § 668.164(d)(4)(i), an institution that enters into an arrangement described in § 668.164(e) or § 668.164(f) (*i.e.,* uses an account offered pursuant to a T1 or T2 arrangement), must establish a selection process under which the student or parent chooses one of several options for receiving those payments. Alternatively, an institution that does not use an account offered pursuant to a T1 or T2 arrangement may make direct payments to an existing account designated by the student or parent, issue a check, or disburse cash to the student or parent without establishing a selection process.

For institutions required to establish a student choice process, the proposed regulations would establish four requirements under proposed § 668.164(d)(4)(i)(A) that must be met in implementing the process.

First, the institution must inform the student or parent in writing that he or she is not required to open or obtain a specific financial account or activate an access device offered by a specific financial institution in order to receive title IV funds. Second, the institution must ensure that the options listed are presented in a clear, fact-based, and neutral manner, except for listing a student or parent's preexisting account as the first, most prominent, and default option. Third, the institution must ensure that initiating direct payments electronically to an existing account is treated equivalently to initiating direct payments to an account offered pursuant to a T1 or T2 arrangement. Fourth, the institution must allow the student or parent the option to change his or her account preference with reasonable written notice.

In addition, the proposed regulations in § 668.164(d)(4)(i)(B) would provide four provisions governing the description of account options under the student choice process. First, the institution must present, prominently and as the first and default option, the ability to receive funds in the student's or parent's existing account. Second, the institution must list and identify the major features and commonly assessed fees associated with all accounts offered pursuant to a T1 or T2 arrangement. (Using a format published by the Secretary in the **Federal Register** following consultation with CFPB would constitute compliance with this provision under the proposed regulations.[66]) Third, the institution may, at its discretion, provide information about other available financial accounts (that are not offered pursuant to a T1 or T2 arrangement) that are insured by the FDIC or NCUA. Finally, the institution must list issuing a check as an option for a student or parent to receive payments.

Reasons: Throughout the course of public hearings and negotiated rulemaking, and in the recommendations from consumer advocates and in government reports, there was near universal agreement that students and parents must be given the opportunity to make an informed choice regarding how they will receive their title IV funds. Negotiators representing students, State attorneys general, consumer advocates, institutions, and the banking sector agreed that (1) students should be given clear and neutral advice on the account terms prior to opening an account; (2) students must not be compelled to open a particular account; and (3) institutions should not favor one particular account to the detriment of others. As stated in the GAO report, ''financial markets function best when consumers are fully informed about financial products and how to choose among them, and NACUBO has recommended that schools present students with information about their college cards in a neutral fashion.'' [67] It is with these principles in mind that we propose to revise § 668.164(d)(4) to ensure that students and parents have the opportunity to make an informed choice regarding the account that best meets their needs.

We believe students and parents should be able to choose the account in which they receive their funds, and that, if students and parents are presented with options, those options should be presented in a clear and fact-based manner. This was a recommendation echoed by every group that has closely examined college card arrangements. GAO recommended that we develop regulations requiring that ''objective and neutral information'' be provided to students and parents regarding options for receiving Federal student aid payments.[68] USPIRG, in its report on college cards, included a similar recommendation, stating that ''students should have an unbiased choice of where to bank,'' and should be ''clearly informed of their ability to use their own existing bank account.'' [69] OIG recommended that we ''develop regulations that require servicers to provide objective and neutral information to students on the available delivery options.'' [70] Consumers Union recommended that we ''require schools to present financial aid disbursement options in a clear and neutral manner, so that students can easily set up an electronic fund transfer to an existing account to receive their funds'' [71] and that ''when a student is making a disbursement selection, she can easily and conveniently select direct deposit to an existing account in order to receive funds.'' [72] We agree with these recommendations, and the overarching purpose of the requirements enumerated in proposed § 668.164(d)(4) is to ensure that these recommendations are carried out.

We also believe that signing up for a financial account promoted or offered by the school should not be a prerequisite of receiving title IV aid. For those students with a preexisting bank account, we think it should be easy and straightforward to select their existing account for receipt of title IV funds. The fact that students or parents have an existing account implies that they have already exercised some measure of informed consumer choice; and our requirement that such an option be listed first, most prominently, and as the default choice, will ensure that students are not misled to believe that choosing an existing account is discouraged or will result in delays.

CFPB has recommended that, as a general matter, students receive their financial aid via direct deposit to an existing bank account.[73] Many school officials interviewed by GAO also acknowledge that college cards may not be the best option for many students, especially those who need more comprehensive products or who already have an existing account. In fact, students attempting to maintain both a college card and an existing account may ''find it costly or inconvenient to

[66] The Department intends to separately seek public comment on the manner and substance of these disclosures when publishing them in the **Federal Register**.

[67] GAO at 34.

[68] GAO at 35.

[69] USPIRG at 25.

[70] OIG at 12.

[71] Consumers Union at 2.

[72] Ibid. at 20.

[73] CFPB. ''Reminder: Accessing your scholarships and student loan funds.'' [Page 1](2013), available at *www.consumerfinance.gov/blog/reminder-accessing-your-scholarships-and-student-loan-funds/.*

manage both accounts concurrently.'' [74] Furthermore, the argument advanced by some financial account providers, that many students are unable to qualify for a bank account, is inconsistent with statements made by the CFPB, which has stated that ''very few students are unable to obtain a bank account.'' [75] For these reasons, our proposed regulations allow students and parents to select an existing account easily.

More disturbing are the practices employed by some financial account providers that seem to eliminate, or at best hamper, the ability of students to choose a product that is best for them. The reports produced by GAO, OIG, CFPB, Consumers Union, and USPIRG all describe troubling practices and the lack of legitimate choice in the student financial products marketplace. These reports describe situations where these providers did not give students any choice as to how they receive credit balances, or where the choice was deceptive.[76] The Federal Reserve Board in 2014 issued a consent order to cease and desist and a civil money penalty assessment against Cole Taylor Bank for deceptive practices engaged in by the bank and its agent Higher One that violated section 5 of the Federal Trade Commission Act.[77] These practices were consistent with the findings in the reports discussed throughout this preamble.

In another case, GAO found a school that was not only recommending its card over direct deposit to students' existing accounts, but also providing guidance to its students on how to switch from their existing accounts to the card option.[78] This finding was further reinforced in public comments received by CFPB, in which students stated that they ''felt pressured to sign up for college cards and that this pressure could convince uninformed students that 'the provider was the only choice.' '' [79]

Some financial institutions and third-party service providers apparently work to create the impression that their product is required or a preferred option for receiving student aid funds. In many cases, financial institutions use access to private student information to send university-branded mailings or a financial access device before students have made a disbursement selection, or even arrived on campus, which may lead the students to believe that the account has already been established on their behalf.[80] For example, OIG found that Higher One typically sends a debit card with the student's name on it, along with instructions to sign up using a Higher One Web site, which allowed Higher One to attempt to persuade students that signing up with that account was the easiest method for receiving credit balances throughout the selection process.[81] FDIC staff told the GAO that existing practices give students the impression that selecting the college card is a ''requirement to receive their funds.'' [82] USPIRG reports that, in the worst cases, some schools simply mandate that all funds be disbursed into an account preselected by the institution.[83]

A school implying that specific accounts are preferred or required is not the only way student choice is limited. Some providers create an environment where the provider's preferred account offering is a de facto requirement because of the way funds are disbursed. One example of this is to create circumstances (or at least the appearance of such circumstances) where receiving disbursement via a non-preferred electronic method will require additional steps or time. Some providers allow students to select the preferred account immediately, but selecting the student's own account requires additional steps, instructions, or documentation.[84] Others allow students to select the preferred account offering online, but require students selecting a different option to fax hand-written forms.[85] One provider claimed that these additional steps are ''an antifraud measure,'' but GAO was told by the industry organization that oversees payment processing that such measures are unnecessary and the account selection process can be achieved equally well online.[86]

Even if additional steps are not required, some providers set up barriers by informing students that a deposit to an existing account will take additional time, and that selecting the preferred account will get students their money the fastest.[87] For students who depend on the timely delivery of their credit balances to pay for off-campus housing, books, or dependent care, this additional time can often be enough to force students to select the provider's account. For example, one student told USPIRG that he was effectively forced to select a preferred account ''even though he wanted to use his own account because he cannot wait the extra [three] to [four] days for a wire to his own bank account.'' [88]

Finally, providers that are third-party servicers have frequently used their advantaged access to student information to market and persuade students to select their debit card over other delivery options.[89] These practices have included collection of student data incidental to the delivery of credit balances.[90] Furthermore, student data have often been provided to these servicers before a student has selected an account, regardless of whether the student ever ultimately received financial aid.[91]

Due to these troubling and widespread practices, we believe institutions should clearly inform students and parents of their options for receiving their title IV credit balance funds. Further, we believe these findings demonstrate that there is no reasonable explanation for delaying direct deposit to a student's existing account or requiring additional documentation or verification and forces students to choose the provider's preferred accounts to get timely access to student aid. Finally, we believe that after an aid recipient has selected a particular financial account—and has had experience with that account, he or she should be afforded the opportunity by the school to change that selection with reasonable written notice and that initial selection of an account should not force a student to use it indefinitely.

In addition, we are also concerned about the type of information students receive about their choices. While some schools present students with unbiased options for receiving their credit balances, GAO found instances where options for receiving payments ''were not presented to students in a clear or neutral fashion,'' and in fact encouraged students to choose the college card over other options.[92] Many schools rely on the materials provided by financial account providers in describing account options, which present providers'

[74] GAO at 25.

[75] CFPB Presentation at 8.

[76] USPIRG at 20.

[77] Board of Governors Of The Federal Reserve System, ''Order to Cease and Desist and Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant To the Federal Deposit Insurance Act and the Illinois Banking Act, As Amended.'' July 1, 2014, available at: *www.federalreserve.gov/newsevents/press/enforcement/enf20140701b1.pdf.*

[78] GAO at 28.

[79] Ibid.

[80] USPIRG at 21.

[81] OIG at 9.

[82] GAO at 28.

[83] USPIRG at 22.

[84] GAO at 27.

[85] USPIRG at 22–23.

[86] GAO at 28.

[87] USPIRG at 22.

[88] Ibid. at 17.

[89] OIG at 9.

[90] Ibid. at 5.

[91] Ibid. at 19.

[92] GAO at 27.

accounts in a complimentary way.[93] As a result, the site students use to select their method of payment often states that a particular account is the ''preferred choice,'' rather than neutrally.[94]

FDIC staff told GAO that ''requiring a clear and conspicuous affirmative statement that students have a choice could enhance student awareness of options.'' [95] NACUBO, the organization that represents school business officers, recommends that schools provide ''a fair explanation of services [without] misleading, biased, or aggressive marketing schemes.'' [96] GAO also recommended that we require that ''schools and financial account providers present students with objective and neutral information on their options for receiving federal student aid payments.'' [97] We agree with these recommendations, and believe that our requirements will help ensure that students receive unbiased information.

USPIRG argued that if students are not informed of the account terms in a clear and easily-understandable manner, they will be unable to make an informed choice as to the account that best meets their needs.[98] OIG agreed on this point, recommending that schools help students understand the fees that they are subject to if they select the servicer's debit card.[99] We believe that our requirements for neutral and objective disclosures address these recommendations.

The importance of objective, neutral, and easily understandable disclosures is highlighted by the concerns of consumer advocates regarding fee disclosures. For example, a common complaint among consumer advocates is that students or parents may be surprised when they are charged fees that they may not have expected, such as the 50 cent PIN fee charged by some servicers. According to USPIRG, ''[s]tudent consumers may have built in assumptions about the product and its fee structures and costs. . . . [T]hey are likely to think that a debit card is a debit card and won't discern the key differences.'' [100] Furthermore, USPIRG advises students that ''[b]anks may insert additional or surprising fees into the small print that could cost [students], such as a fee for not using [an] account.'' [101] To address this problem, GAO recommended that the Secretary should ''[i]n consultation with CFPB, develop requirements that schools and college card providers present students with objective and neutral information on their options for receiving federal student aid payments.'' [102]

Since the release of the USPIRG and GAO reports, CFPB has issued an NPRM that proposes to create short form disclosures for prepaid accounts. These short form disclosures would highlight ''key fees that [CFPB] believes are most important for consumers to know about. . . .'' [103] CFPB further noted that the ''short form's design . . . will prominently present key fees, and create a visual hierarchy of information that will more effectively draw [a] consumer's attention to a prepaid account product's key terms'' [104] and that the design of the short form ''will increase the likelihood that consumers will engage with the disclosure.'' [105]

To help students and parents obtain objective, neutral, and easily understandable information about their options, we propose to work with CFPB to ensure that students and parents receive fee information prior to acquiring an account by adding these disclosures to the selection process in a format similar to the disclosures CFPB has proposed. We agree with CFPB that receiving disclosures prior to the acquisition of an account would ''ensure that the features of the prepaid accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account,'' [106] and we have chosen to adopt the same disclosure timeline for accounts offered under T1 and T2 arrangements.

Because the proposed disclosures in CFPB's NPRM are designed for prepaid accounts, and the financial accounts under T1 and T2 arrangements may be either prepaid accounts or traditional checking accounts, and because the model forms address certain fees not permitted under this NPRM to be assessed against students or parents opening financial accounts offered under a T1 arrangement, we will likely be unable to use the exact format of the short form disclosure proposed in CFPB's NPRM. In addition, CFPB may alter the requirements for its short form disclosures while we are in the process of developing final cash management regulations. For these reasons, instead of adopting the short form disclosures described in the CFPB NPRM at this time, we plan to develop consumer-friendly disclosures in close consultation with CFPB and to release the format for those disclosures in a **Federal Register** notice following the publication of our final regulations.

Finally, in our proposed regulations, we allow schools to provide information to students about other accounts not offered pursuant to a T1 or T2 arrangement because we do not want the student choice provisions to prevent schools from making good faith attempts to inform students of convenient banking options. The proposed regulations also allow students to continue to receive funds via a check because many institutions believe that a disbursement option via non-electronic means best serves their students. We invite comment as to whether the option to receive a check should continue to be affirmatively offered to students, although we note here that offering a check will continue to be allowed in the event students fail to make a choice on how to receive their credit balance.

One of the most critical aspects of this rulemaking is ensuring that students are truly able to easily receive their title IV funds in an account of their choosing. We believe that the requirements of proposed § 668.164(d)(4) would address the numerous problems with the existing account selection process and provide students the opportunity to choose their account, while still allowing institutions the opportunity to offer students a variety of options.

Consent Prior To Disclosing a Student's or Parent's Information, Sending an Access Device, or Associating or Opening an Account (§ 668.164(e)(2)(i) and (f)(4)(i))

Current Regulations: Current § 668.164(c)(3)(i) states that in cases where the institution opens a bank account on behalf of a student or parent, establishes a process the student or parent follows to open a bank account, or similarly assists the student or parent in opening a bank account, the institution must obtain in writing affirmative consent from the student or parent to open that account.

Proposed Regulations: Proposed § 668.164(e)(2)(i)(A) and (f)(4)(i)(A) require that an institution obtain consent to open an account under a T1

[93] USPIRG at 20.
[94] Ibid.
[95] GAO at 29.
[96] Ibid.
[97] Ibid. at 35.
[98] USPIRG at 21.
[99] OIG at 13.
[100] USPIRG at 21.
[101] Ibid. at 28.
[102] GAO at 35.
[103] CFPB. ''Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z).'' [Page 2] (2014), available at *www.gpo.gov/fdsys/pkg/FR-2014-12-23/pdf/2014-27286.pdf.* With subsequent references ''CFPB NPRM at [page number].''
[104] CFPB NPRM 49.
[105] Ibid.
[106] Ibid. at 68.

or T2 arrangement from the student or parent before sharing any information about the student or parent, other than name, address, and email address, with the third-party servicer or financial institution marketing or offering the financial account.

Proposed § 668.164(e)(2)(i)(B) and (f)(4)(i)(B) require that an institution obtain a student's or parent's consent to open a financial account before an access device, or any representation of an access device, is sent to the student or parent.

Proposed § 668.164(e)(2)(i)(C) and (f)(4)(i)(C) require that an institution obtain consent from the student or parent before a card or tool provided to the student or parent for institutional purposes, such as a student ID card, is linked with a financial account.

Reasons:

Disclosing a Student's or Parent's Information

In its report, USPIRG raised concerns regarding third-party servicers and financial institutions using their access to personal information to market financial accounts to students.[107] OIG stated that the information provided by institutions to financial account providers was often extensive and could include a student's photo, full name, physical address, birthdate, student ID number, phone number, email address, and gender.[108] OIG further stated that, in some cases, the information being provided was ''optional . . . and therefore not needed to complete the credit balance delivery'' and that ''[a]s optional information, it did not serve a legitimate educational purpose . . . .'' [109] In response to these findings, and in an effort to prevent marketing abuses, we initially proposed to the negotiating committee regulations that banned institutions from sharing any information about the student or parent with a financial institution or a third-party servicer until a student or parent affirmatively consented to open an account.

While some negotiators also had concerns regarding the use of a student or parent's personally identifiable information in marketing or opening financial accounts, others expressed concerns that third-party servicers would be unable to perform their duties without data provided by institutions. In response, we revised our proposal to state that an institution may not share with the entity (*e.g.,* a third-party servicer, financial institution, or other person) any information about the student or parent until the student or parent makes a selection regarding how they choose to receive direct payments.

Prior to the final session, negotiators representing third-party servicers and financial institutions continued to express concerns that this draft language would prohibit third-party servicers from performing their duties and stated that, at minimum, servicers would require a student or parent's permanent address, delivery address (if different), date of birth, partial Social Security number or tax ID number, student ID number, cryptographic information, unique identifier(s), phone number, email address, secure alternatives to email messaging, gender, photos, password or other unique item only known by the student, and confirmation that the student is to receive a title IV credit balance disbursement and the amount of such disbursement.[110] We were not presented with evidence that all of these items were needed, so we proposed a draft that prohibited institutions from sharing any information with third-party servicers or financial institutions other than the student's or parent's name, address, and email address until the student or parent selected an option for receiving direct payments of financial aid.

In this proposal, we maintain our position that the only information that an institution may initially share with a third-party servicer or financial institution is the student's or parent's name, address, and email address. This limitation on sharing personal information applies to both T1 and T2 arrangements. While we appreciate the concerns of the negotiators for third-party servicers and financial institutions, we disagree that extensive personal information is necessary for a third-party servicer or financial institution before a student or parent gives consent to open an account. However, the institution may provide additional information after the student or parent consents to open the account.

To clarify our position, we have also amended the language to require that in order to share more than this basic contact information with a servicer or financial institution, a student or parent must provide consent to actually open an account, rather than simply select an option for receiving direct payments of financial aid.

We believe that the proposed language strikes a balance between the need for a third-party servicer to be able to perform its duties, a financial institution to make its financial accounts available to students and parents, and the privacy of an individual's personal information. We invite comment on whether the personal information that an institution may provide before a student or parent consents to open a financial account in our proposed regulations is sufficient to meet the needs of a servicer or financial institution.

Sending an Access Device

USPIRG stated that ''[o]ften, the disbursement card is mailed to the student before he or she has made a disbursement selection'' [111] and that, in conjunction with other aggressive marketing tactics, this can ''set the expectation that the school has already set up the bank account for the student and that they don't have a choice.'' [112]

We share the concerns regarding manipulation and potentially deceptive marketing practices detailed by USPIRG. As a result of those concerns and in response to the suggestions of negotiators at the first session of negotiated rulemaking, we originally proposed provisions that would allow an institution to send a debit card, prepaid card, or access device associated with the account to a student or parent only if the student or parent specifically requests it after providing consent to open an account. While some negotiators supported our position that a student or parent should have to request a card, others expressed concerns that ''[p]rohibiting [an] institution from sending an unactivated debit or similar card to a student interferes with the student's access to [t]itle IV funds . . . .'' [113]

In this NPRM, we have modified the approach we initially took in the negotiations by removing the requirement for the student or parent to specifically request the card, while retaining a requirement that the student or parent consent to opening the account before the card is sent by an institution, third party servicer, or an associated financial institution. Though we understand that the requirement to obtain consent to open a financial account before sending an access device

[107] USPIRG at 21.

[108] OIG at 19.

[109] Ibid.

[110] Kundert, Levandowski, McGuane, and Norwood. Memo to Negotiated Rulemaking Committee. [Page 12] (2014), available at *www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii4-cashmgmt-klmn-050114.pdf.* With subsequent reference ''Kundert, Levandowski, McGuane, and Norwood May 1, 2014 Memo [page number].''

[111] USPIRG at 21.

[112] Ibid.

[113] McGuane. Memo to Negotiated Rulemaking Committee. [Page 5] (2014), available at *www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii3-caseymcguane-cashmgmt-040214.pdf.*

to a student or parent may slow the speed with which a student or parent could access his or her credit balance, we believe that requiring that consent be obtained initially helps to dispel the implication that the access device and its associated financial account are required by the institution. We also believe it reinforces the notion that choosing to use the access device and its associated account is, in fact, a choice. This provision does not apply to cards or devices distributed for institutional purposes that can also serve as access devices if activated, such as student identification cards; those institutional cards or devices are addressed next.

Associating a Card or Device With a Financial Account

According to the GAO's report, in cases where student IDs can also be electronically linked with financial accounts, ''either the school or the card provider issues student ID cards to all students. Students then can choose whether to have their ID card also serve as a debit or prepaid card.'' [114]

In our initial draft of the proposed regulations presented at the second session of negotiations, we proposed banning access devices from bearing the institution's logo or mascot, or otherwise implying an affiliation with the institution. According to negotiators, this would have prevented student IDs or similar institutional devices from being electronically linked to financial accounts that are controlled by outside entities. In response to those concerns, subsequent drafts contained provisions requiring consent to open an account that are very similar to the provisions contained in these proposed regulations.

We note that if an institution chooses to allow this functionality on products used for institutional purposes, the institution, third-party servicer, or financial institution is required to obtain consent from the student or parent to open the financial account. The proposed language in § 668.164(e)(2)(i)(C) and (f)(4)(i)(C) does not prohibit an institution or third-party servicer from distributing a student ID that is fully functional for institutional purposes and that contains an inactive device or other inactive means of using the card to access a linkable financial account. However, before activating this financial capability, electronically linking, or otherwise associating the ID card with the financial account, the institution must first secure consent to open the financial account from the student or parent. We believe this is a balanced approach that will not constrain institutional functions for which these cards may be necessary, but will ensure that students or parents make an affirmative decision before an account is effectively activated on their behalf.

While we believe that this provision allows students the option to obtain a multipurpose device while also improving consumer protections around student IDs and similar products, we have concerns about allowing devices distributed for institutional purposes to become associated with financial accounts. Because of these concerns, we are open to further suggestions from the public on how to prevent coercive marketing practices with respect to institutional devices such as student IDs and associated financial accounts.

Disclosure of Account Information ((§ 668.164(e)(2)(ii) and § 668.164(f)(4)(ii))

Current Regulations: Under current § 668.164(c)(3)(ii), in cases where the institution opens a bank account on behalf of a student or parent, establishes a process the student or parent follows to open a bank account, or similarly assists the student or parent in opening a bank account, the institution must, before the account is opened, inform the student or parent of the terms and conditions associated with accepting and using the account.

Proposed Regulations: Under proposed § 668.164(e)(2)(ii) and (f)(4)(ii), institutions must inform the student or parent of the terms and conditions of the financial account, as required under § 668.164(d)(4)(i)(B)(*2*), before the financial account is opened.

Reasons: For clarity and to ensure that the regulatory requirements for institutions that have a T1 or T2 arrangement are comprehensively listed in the relevant section of the proposed regulations, we have cross-referenced the requirements of § 668.164(d)(4)(i)(B)(*2*) in § 668.164(e)(2)(ii) and (f)(4)(ii), respectively. Section 668.164(d)(4)(i)(B)(*2*) requires that institutions list and identify the major features and commonly assessed fees associated with all accounts described in § 668.164(e) and (f), as well as a Universal Resource Locator (URL) for the terms and conditions of those accounts. For each account, if an institution follows the format and content requirements specified by the Secretary in a notice published in the **Federal Register** following consultation with the CFPB, it will be in compliance with this requirement with respect to the major features and assessed fees associated with the account. For discussion of this issue, please refer to the ''Clear and neutral information'' section of § 668.164(d) of the preamble.

Fee Provisions for T1 Accounts (§ 668.164(e)(2)(iii)–(iv))

Current Regulations: Current § 668.164(c)(3)(iv) states that, if an institution opens, establishes a process the student or parent follows to open, or similarly assists a student or parent in opening a bank account, the institution must ensure that the student or parent does not incur any cost in opening the account or initially receiving any type of debit card, stored-value card, other type of ATM card, or similar transaction device that is used to access the funds in that account.

Current § 668.164(c)(3)(v) states that institutions must ensure that the student has convenient access to a branch office of the bank or an ATM of the bank in which the account was opened (or an ATM of another bank), so that the student does not incur any cost in making cash withdrawals from that office or these ATMs. This branch office or these ATMs must be located on the institution's campus, in institutionally owned or operated facilities, or, consistent with the meaning of the term ''public property'' as defined in § 668.46(a), immediately adjacent to and accessible from the campus.

Current § 668.164(c)(3)(vi) requires that institutions ensure that the debit card, stored-value card, ATM card, or other device can be widely used. For example, the institution may not limit the use of the card or device to particular vendors.

Finally, current § 668.164(c)(3)(vii) requires that institutions not market or portray the account, card, or device as a credit card or credit instrument, or subsequently convert the account, card, or device to a credit card or credit instrument.

Proposed Regulations: Proposed § 668.164(e)(2)(iii)(A) maintains the existing requirement that institutions ensure students have ''convenient access'' to accounts offered pursuant to a T1 arrangement but specifies that convenient access includes access through a regional or national ATM network with ATMs located on or near each location of the institution.[115] We propose that convenient access also includes access to a sufficient number of

[114] GAO at 9.

[115] The intent of the proposed regulations is that the requirement for an ATM to be located on or near each location applies to each location or branch approved as part of the institution's application for eligibility under 34 CFR 600.10, or required to be reported to or approved by the Department under 34 CFR 600.20(c)(1), 600.20(c)(3), 600.21(a)(2), or 600.21(a)(3).

ATMs that are located and maintained in a manner such that funds are reasonably available from them, including at the times the institution or its third-party servicer makes direct payments into the student and parent financial accounts. Proposed § 668.164(e)(2)(iii)(B)(*3*) requires that the institution ensure that students and parents do not incur any cost for conducting any transaction at such an ATM.

Proposed § 668.164(e)(2)(iii)(B)(*1*) maintains, for accounts offered pursuant to a T1 arrangement, the current requirement that an institution must ensure that students and parents incur no cost for opening the account or initially receiving an access device.

Proposed § 668.164(e)(2)(iii)(B)(*2*) specifies that an institution must ensure that a student or parent who opens a financial account offered pursuant to a T1 arrangement does not incur a cost assessed by the institution, third-party servicer, or third-party servicer's associated financial institution when the student or parent conducts a point-of-sale transaction.

Proposed § 668.164(e)(2)(iii)(B)(*4*) requires that an institution ensure that a student or parent does not incur a cost initiated by the institution, its third-party servicer, or the third-party servicer's associated financial institution for at least 30 days following the date that title IV funds are deposited or transferred into the financial account offered pursuant to a T1 arrangement.

Proposed § 668.164(e)(2)(iv) maintains the current requirement that an institution ensure that the financial account or access device is not marketed or portrayed as a credit card, and would further specify that the card not be converted to a credit instrument and that no fee is charged to the student or parent for any transaction that exceeds the balance on the card, regardless of whether the full amount of the transaction is established at the time the transaction is authorized by the financial institution.

Reasons: Over the past several years, a growing group of consumer advocates, higher education stakeholders, government agencies, and Members of Congress have raised concerns about the incidence, type, and frequency of fees assessed on cards offered to students under agreements with third parties to receive their title IV credit balances.[116] The majority of funds paid to students are credit balance disbursements of title IV student aid, which is ''intended to help students pay for nonschool items related to their education.'' [117] As USPIRG has stated, the amount of fees assessed to student aid recipients under these agreements is especially critical because not only are these funds taxpayer-provided, but ''students receiving grant aid, such as the Pell grant, are mostly low-income students with a high level of need. Students taking out federal loans are primarily from low and moderate income backgrounds, paying interest on those funds.'' [118]

As noted previously, due to a number of factors, including changes made by the CARD Act and decreasing State support for higher education, to mitigate the cost and burden of disbursing title IV funds schools have increasingly opted to contract with third-party servicers. While institutions have saved money by outsourcing administrative functions, those savings may have been transferred as costs to students through fees that reduce their title IV aid balances. Indeed, Higher One has stated that about 50 percent of its $180 million in revenues for the year that ended December 31, 2011, came from account activity fees associated with one of its account offerings.[119]

There is also evidence that some students are incurring unreasonably high fees associated with these account offerings. Public comment the Department received in anticipation of the negotiated rulemaking sessions indicated that fees were unnecessarily high and reduced student aid intended to address costs of attendance. Staff from the FDIC have reported that some students have ''complained of paying aggregate fees ranging from hundreds of dollars to more than $1,000,'' [120] and even isolated cases of high levels of fees can completely compromise the balance of funds intended to cover educationally related expenses. These and similar reports, including the legal actions resulting from third-party servicer behavior, have led groups like Consumers Union and USPIRG to recommend the total elimination of fees for campus cards.[121]

During negotiated rulemaking, the Department's proposals on the subject of allowable fees in particular generated significant disagreement among negotiators. Student representatives voiced support for the Department's approach prohibiting most fees, and asked that debit card ''swipe'' fees also be prohibited from being charged under institutional agreements with outside parties. Other negotiators disagreed with prohibitions on fees—particularly the provision requiring unlimited reimbursement to students for ATM surcharges. These negotiators stated that prohibiting institutions from allowing fees to be charged to students would ultimately be counterproductive because it would prevent providers from recovering their costs and drive them from the market. Consequently, institutions would be forced to adopt less efficient, more costly processes for making payments to students and these less efficient processes would affect students through tuition increases that would be more onerous to students than paying account fees set at fair market rates.

In sum, most negotiators expressed a preference for a framework that would: (1) Allow a reasonable fee structure to remain in place, (2) not favor direct deposit to the point of preventing a student from selecting a more favorable sponsored account, and (3) present a clear set of options to allow students to make an informed choice.

The Department is sympathetic to the position advocated by consumer advocates and students. The intent of title IV student aid is to give students the financial assistance necessary to help pay for their postsecondary education. The greater the number and amount of fees, the less money students will have to pay for educationally related expenses such as housing, books, supplies, and childcare. Title IV grant recipients are typically low-income individuals and these fees will disproportionately impact low-income students.

However, even financial accounts available to the general public are not truly free, and fees can often be difficult to avoid entirely. As OIG stated, ''students who choose to receive their title IV funds by check or direct deposit to an existing account might incur fees or other costs to access and spend the funds once they have been delivered. Students who have their funds transferred to an existing bank account are subject to the fees charged by their financial institution based on account activity, whereas students who choose to receive their funds by check may incur check-cashing fees.'' [122] Furthermore, many of the providers of campus cards do not charge fees ''higher than those associated with other banking products available to students,'' [123] though as explained previously, certain providers are more

[116] GAO at 1.

[117] Ibid. at 4.

[118] USPIRG at 15.

[119] OIG at 4.

[120] GAO at 23–24.

[121] USPIRG at 3.

[122] OIG at 14.

[123] GAO at 15.

likely to do so, and have shown evidence of doing so, resulting in our differing treatment of T1 and T2 arrangements.

Perhaps the most disturbing aspects about fees charged to students are the complexity, obscurity, and confusing nature of certain fees that are charged. We believe that certain practices employed by institutional third party servicers are inconsistent with normal banking practices, or have damaging consequences to Federal student aid recipients, or both. We believe that absent targeted provisions addressing specific fee-related issues, students and parents that are offered financial accounts under T1 arrangements will continue to be subject to the alarming practices identified by government agencies and consumer groups that led to this rulemaking effort.

Under this approach, the Department is not prohibiting a financial institution from charging any particular fee; only that the contract negotiated by the institution and the servicer prohibit certain fees from being passed on or assessed to recipients of title IV aid who open accounts under a T1 arrangement. The institution and servicer would, as a part of normal contractual negotiations, bargain between themselves for services provided in full appreciation of the true costs being borne by all parties, including the costs to the servicer and its associated financial institutions of complying with these regulatory provisions. Under title IV, the cost of paying students is a responsibility incident to the administration of the programs which the HEA entrusts to institutions. We believe this is an appropriate remedy for the acknowledged cost-shifting from institutions to students of title IV disbursement services.

ATM Access

Current regulations require institutions to ensure that students have ''convenient access'' to their title IV funds through ATMs. GAO, OIG, USPIRG, and Consumers Union (among others) have recommended that the Department more clearly define convenient access, so that students ''have meaningful ways to access their financial aid at no cost.'' [124] [125] Most financial institutions associate their debit or prepaid card to a regional or national ATM network, providing a level of convenience attributable largely to the total number of ATMs; for transactions on that network, there are no surcharges.[126]

However, the same level of access is not typically provided by third-party servicers, or their associated financial institutions. For example, according to USPIRG, Higher One is responsible for disbursing title IV funds for about 520 schools, but with 700 ATMs in service,[127] the number of ATMs at a given location may be insufficient for students to have a reasonable opportunity to access their funds at the surcharge-free ATM. According to USPIRG and GAO, this can cause a ''run'' on surcharge-free ATMs, especially during periods when funds are generally disbursed to students, that can result in these ATMs running out of cash,[128] or causing dozens of students to line up to withdraw their money.[129] Aside from the security concerns associated with large groups of students withdrawing hundreds of dollars in cash at a single location, the lack of available surcharge-free ATMs can lead to unnecessary fees charged to students. When lines are long or ATMs run out of money, students are forced to incur out-of-network ATM fees, often at $5 per withdrawal.[130] These fees can quickly add up, especially for students who make multiple smaller withdrawals to carefully manage their funds on a tight budget.[131]

As noted previously, the common approach in the financial products market is to provide a network, either regional or national, of surcharge-free ATMs. Even third-party servicers who otherwise restrict surcharge-free access to a single ATM provide broader network coverage for a flat monthly fee,[132] indicating that such an approach is workable given existing market conditions. To help ensure reasonable access, ATMs located on campus must be sufficient in number and reasonably accessible, as determined and documented by the institution. Negotiators representing both servicers and the banking industry agreed that access to a surcharge-free network of ATMs was a common feature of most banking products, and a feasible approach to providing convenient access to funds. For these reasons, the proposed regulations require that accounts offered pursuant to a T1 arrangement provide access to such a network, enabling students and parents exercising ordinary care to have reasonable access to their student aid dollars.

Point-of-Sale Transaction Fees

One of the more troubling fees assessed to students by third party servicers is what is known as a ''point-of-sale swipe'' fee or ''PIN debit'' fee (hereafter referred to as a PoS fee). This fee is distinct from the interchange fee charged to merchants on a per-sale basis as a charge for the service of fulfilling the credit card or debit card payment request. Instead, the PoS fee is charged to students by the institution's financial account provider as a surcharge for selecting the ''debit'' function and entering a PIN to complete a purchase, and charges no such surcharge for selecting the ''credit'' function and signing for their transaction. Each PoS fee is typically small—usually about $0.50 [133]—but is objectionable for three reasons.

First, because most student cards are marketed or portrayed as a debit card or having functionality similar to a debit card, students are likely to believe that selecting the ''debit'' option is required to complete the transaction.[134] [135] They are unlikely to recognize that while the ''debit'' option results in a charge, the ''credit'' function does not.

Second, the PoS fee is excessive. The fee is assessed each time the student uses the card. Since one-third of all such transactions are for less than $15, the PoS fees are high relative to the cost of the purchase and can add up quickly with repeated charges.[136] Public comments to CFPB on financial products offered to students specifically reiterated these concerns.[137]

Third, PoS fees are uncommon outside of the third-party servicer realm. GAO found that ''no basic or student account that we reviewed for comparison purposes charged a transaction fee for using the account's debit card.'' [138] Consumers Union, in a review of the banking products made available to students, found that PoS fees were atypical in the market—only two of the 16 products surveyed employed such a fee.[139] This makes such a fee unexpected and difficult for students to both anticipate and estimate when comparing prospective account options. It also suggests that some third-party servicers, by imposing onerous

[124] Consumers Union at 1.
[125] GAO at 35.
[126] Ibid. at 21.
[127] USPIRG at 16.
[128] Ibid. at 17.
[129] GAO at 22.
[130] USPIRG 17.
[131] GAO at 21.
[132] Ibid. at 22.
[133] Ibid. at 20.
[134] OIG at 13.
[135] GAO at 20.
[136] Ibid.
[137] CFPB RFI.
[138] GAO at 20.
[139] Consumers Union at 11.

account terms, seek to take advantage of the unique position they occupy in administering title IV programs to put onerous terms in place, especially at the expense of often young and inexperienced students.

Third-party servicers and institutional officials told GAO, and reiterated during negotiations, that adjustment of student behavior can limit these charges: ''students can avoid fees in some cases by choosing to authorize debit transactions using a signature rather than a PIN. . . .'' [140] However, it appears that the purpose of these charges is to encourage students to utilize the ''credit'' function when charging a transaction because the financial provider realizes a higher interchange fee when a debit card transaction is processed with a signature.[141] Again, however, regular accounts provided in the general banking market do not assess this fee.[142]

PoS fees have been actively identified as harmful to students in multiple reports because they are atypical, opaque, difficult for students to anticipate and compare with other account offerings, and are often disproportionate to the amount of the underlying financial transaction. Most importantly, it is feasible for schools and their third-party servicers to negotiate the terms of a contract such that any cost is not passed on to account holders. Indeed, that is precisely what was accomplished at one institution when students became aware of the charge and relayed their complaints to the institution's administration.[143]

Overdraft Fees

Overdraft fees are more common in the general banking market. Overdraft fees (sometimes also referred to as overdraft protection, transaction denial fees, or insufficient funds charges, among other designations) are assessed when an account holder attempts to charge a purchase on a card or other access device in excess of the outstanding balance of the account.

Historically, such fees were ''ad hoc courtesies banks would occasionally provide customers; they were never intended to become a routinely administered, extremely high-cost credit product.'' [144] However, as these charges have become somewhat more common, more banks are allowing overdrafts and charging a fee, rather than denying the charge at the moment of attempted transaction.[145]

Nevertheless, these fees are not widely imposed across all sectors. CFPB's study of the prepaid card market indicated that of all prepaid card agreements surveyed, more than 95 percent did not extend overdraft service to their cards, indicating that not only is it possible to remove such ''protection'' from a device or account, but it is already a widespread practice in this market segment.[146] And the imposition of these fees by some providers does not imply a lack of harm to the account holder: CFPB has found that the imposition of these fees by some providers has the ''capacity to inflict serious economic harm.'' [147] CFPB has also determined that many consumers incur a significant amount of overdraft fees and that even those with ''moderate'' overdraft usage may pay hundreds of dollars annually.[148] Specifically, those who ''frequently'' overdraft and whose debit cards lost such functionality saved more than $450 annually compared to those who continued to receive overdraft services,[149] an amount that on its own would exhaust many students' entire credit balances. Communities of color, seniors, young adults, and military families may also be particularly susceptible to overdraft fees.[150]

The Federal Reserve has adjusted the overdraft fee to an ''opt-in'' service; however, consumers are likely to misunderstand information given to them on such processes and whether these ''protections'' are in their best interests.[151] [152] Furthermore, ''a large majority of consumers'' prefer that banks decline debit card overdrafts rather than approve them in exchange for the typical fee.[153] [154]

A number of practices around overdrafts are troubling and are likely to result in students incurring excessive fees to access their financial aid funds. Typically, the cost of the overdraft fee itself is as much as twice the underlying charge. The reasons for this are difficult to discern, especially because the banking provider can deny the transaction at no cost, rather than extending credit to the account holder.[155] In addition to the overdraft fee itself, some banks charge for negative account balances—so the fee is initially incurred at the time of the charge and then additional fees are charged for days or weeks thereafter.[156] One particularly troubling practice is the purposeful reordering of transactions to prioritize the charges that will place a customer's account in overdraft status. Then, each subsequent (and typically smaller) transaction incurs results in additional charges.[157]

Additionally, in 2012, Higher One settled a lawsuit with the FDIC, agreeing to return more than $10 million to students for account overcharges, including charging students multiple nonsufficient funds (NSF) fees for the same transaction.[158] [159]

As detailed above, the overdraft fees present the potential for significant costs and harm to students, especially because students are often among those most vulnerable to incurring such charges. However, in most cases, the remedy for such harm is simple and is already practiced by the vast majority of prepaid card providers. The financial institution has the opportunity to refuse the charge sought to be authorized.[160] [161] We understand that in limited circumstances there is a potential for a card issuer to be faced with, for example, a gratuity that exceeds the balance on the card even though the account contained sufficient funds to pay the initial charge when authorized,

[140] GAO at 24.

[141] USPIRG at 33.

[142] Ibid. at 27.

[143] OIG at 14.

[144] Center for Responsible Lending, ''State of Lending: High-Cost Overdraft Practices.'' [Page 2] (2013), available at *www.responsiblelending.org/state-of-lending/reports/8-Overdrafts.pdf*. With subsequent references ''Center for Responsible Lending at [page number].''

[145] Center for Responsible Lending at 3.

[146] Consumer Financial Protection Bureau. ''Study of Prepaid Account Agreements.'' [Page 25] (2014), available at *files.consumerfinance.gov/f/201411_cfpb_study-of-prepaid-account-agreements.pdf.*

[147] CFPB. ''Prepared Remarks, CFPB Roundtable on Overdraft Practices.'' (2012), available at *www.consumerfinance.gov/speeches/prepared-remarks-by-richard-cordray-at-the-cfpb-roundtable-on-overdraft-practices/*).

[148] CFPB. ''CFPB Student of Overdraft Programs: A White Paper of Initial Findings.'' [Page 61] (2013), available at *files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf.* With subsequent references ''CFPB White Paper at [page number].''

[149] CFPB White Paper at 38.

[150] Center for Responsible Lending at 13.

[151] USPIRG at 32.

[152] Center for Responsible Lending. ''Banks Collect Overdraft Opt-ins through Misleading Marketing.'' [Page 2] (2011), available at *www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/banks-misleading-marketing.html*).

[153] Center for Responsible Lending. ''Consumers Want Informed Choice on Overdraft Fees and Banking Options.''[Page 1] (2008), available at *www.responsiblelending.org/overdraft-loans/research-analysis/final-caravan-survey-4-16-08.pdf.*

[154] The Pew Center on the States, Safe Checking in the Electronic Age. (2012). Overdraft America: Confusion and Concern about Bank Practices. [Page 2] (2012), available at *www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/SCIBOverdraft20America1pdf.pdf.*

[155] Center for Responsible Lending at 3.

[156] USPIRG at 33.

[157] Center for Responsible Lending at 7.

[158] OIG at 13.

[159] FDIC at 1.

[160] USPIRG at 26.

[161] Center for Responsible Lending at 11.

but the draft regulations would not create any exception to the ban on overdraft fees to address such situations. Instead, the proposed regulations would leave the card issuer responsible for placing such limits on its authorization process that it may believe necessary, if any, to address these situations, rather than permitting imposition of insufficient funds fees that deplete students' and parents' title IV credit balances. We believe deficiencies in the authorization process should not trigger a fee assessed to a student, though we acknowledge that the student is responsible for paying any balance due.

30 Days Free Access to Funds

As explained above, we recognize that, generally, institutions will charge account holders some fees, either on a regular basis or in response to specific behaviors. We have sought to address the three specific types of fees based on the impediments they pose for students seeking access to the title IV aid to which the students are entitled. We believe that these three types of fees are particularly onerous, difficult to understand and anticipate, or uncommon. The unifying characteristic of the proposed regulations addressing these specific fees is to give students a reasonable opportunity to access their full title IV credit balance refund—which is statutorily determined as the amount intended to provide the means by which to pay for the costs of attending the institution. The proposed regulation barring servicers or their associated financial institutions from assessing a fee for 30 days following the receipt of title IV funds is also consistent with our objective of affording students and parents a reasonable opportunity to access their full title IV credit balance.

As recommended by USPIRG, we believe aid recipients should particularly be able to access their title IV funds during the period immediately following disbursement, when they are most likely to need funds to cover educationally related expenses, without charge.[162] We emphasize that this is not a blanket prohibition on fees of any kind being assessed to the account. For example, if a student uses an out-of-network ATM, a servicer or its associated financial institution may not have control over a fee assessed by the owner of that ATM. Instead, this provision only prevents a student from incurring a cost initiated by the servicer or its associated financial institution. During negotiations, many non-Federal negotiators agreed that a fixed period of time following the disbursement of funds was an acceptable compromise, giving students a reasonable opportunity to receive their title IV funds; the use of the account after that period would then be subject to fees as a cost of using the account. We specifically invite comment on whether 30 days following a disbursement is an appropriate timeframe to allow a title IV aid recipient an opportunity to reasonably access aid dollars free of charge.

Finally, we emphasize that we do not intend these fee provisions to discourage institutions from negotiating even more favorable arrangements that provide students and parents with better account terms. We believe that institutions should use their considerable negotiating leverage to get the most favorable offerings on behalf of those they serve.

Disclosure of Contracts for T1 and T2 Arrangements ((§ 668.164(e)(2)(v) and (§ 668.164(f)(4)(iii))

Current Regulations: None.

Proposed Regulations: In both § 668.164(e)(2)(v)(A) and § 668.164(f)(4)(iii)(A), we propose to amend our regulations to state that, under both T1 and T2 arrangements, no later than 60 days after the most recently completed award year, an institution must provide to the Secretary and disclose conspicuously on the institution's Web site the contract between the institution and financial institution (or, with respect to paragraph (e)(2)(v)(A), its third-party servicer) in its entirety, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities.

Reasons: Throughout the process of developing these proposed regulations, outside parties informed us that a major problem with studying the impact of college financial agreements is the lack of transparency surrounding those agreements. As a result, USPIRG, GAO, Consumers Union, and NACUBO have all recommended that these agreements or contracts be made available to the public.

During negotiated rulemaking, several negotiators urged the Department to ''issue regulations that require schools to publically disclose the terms of such arrangements, as well as the method and criteria used by the school in selecting the partner financial services company.'' [163] Because we agreed, we presented draft language to the negotiators containing provisions requiring an institution to post the contract on its Web site.

However, not all negotiators agreed with the Department's position that the full contract should be available on the institution's Web site. Negotiators representing financial institutions and third-party servicers argued that ''disclosure of [the] contract documents would potentially damage competition by making public critical proprietary information, and would create security concerns where, as is often the case, a servicer's technical system specifications and processes were appended to or otherwise included in the contract document.'' [164] These negotiators also reasoned that a summary of the terms would be sufficient to achieve the transparency that negotiators representing students, consumer advocates, and State attorneys general desired.

While we are sensitive to the concerns raised by third-party servicers and financial institutions, there is evidence that releasing the complete contract would not result in the negative outcomes cited. In a 2012 NACUBO survey, 55 percent of the responding institutions that contracted with a third-party vendor indicated that their agreements are publically available, and that these agreements are most likely accessible through public records requests (39 percent) or by written request to a specific office on campus (33 percent).[165] As for institutions with banking agreements, ''[t]he details of agreements between banks and institutions are publicly available at 69 percent of participating institutions, with contract documents accessible through written request to a specified campus department or office (46 percent) or through an official public records request (26 percent).'' [166]

Although this survey was only sent to 2,036 institutions with 412 responding, we believe it makes the important point that institutions are already releasing contracts without damaging consequences. Given that third-party servicers and financial institutions continue to contract with institutions that make their agreements available to the public in various ways, we believe that disclosing those agreements is not harmful and is likely to enhance rather than inhibit competition.

[162] USPIRG at 25.

[163] Fast and Wojewoda. Memo to Negotiated Rulemaking Committee. [Page 3] (2014), available at *www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii2-fast1-cashmgmt.pdf.*

[164] Kundert, Levandowski, McGuane, and Norwood May 1,2014 Memo at 11.

[165] NACUBO at 3.

[166] Ibid. at 4.

However, to address the concerns raised by third-party servicers and financial institutions, our proposed regulations, like the final proposal distributed during negotiated rulemaking, would create an exemption for any provision of the contract that would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities and would permit the parties to the contract to redact such information. We believe that exempting these provisions from public disclosure will safeguard proprietary and security-related information while also creating the transparency that many advocates have called for.

Disclosure of Contract Summaries for T1 and T2 Arrangements (§ 668.164(e)(2)(v)(B), (e)(2)(v)(C), (f)(4)(iii)(B), and (f)(4)(iii)(C))

Current Regulations: None.

Proposed Regulations: In § 668.164(e)(2)(v)(B), § 668.164(e)(2)(v)(C), § 668.164(f)(4)(iii)(B), and § 668.164(f)(4)(iii)(C), we propose to amend our regulations to state that, under a T1 or T2 arrangement, no later than 60 days after the most recently completed award year, an institution must provide to the Secretary and disclose conspicuously on its Web site the total consideration for the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract, the number of students and parents who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders.

Reasons: Complicating the issue of the lack of transparency regarding agreements between third-party servicers or financial institutions and institutions is the fact that, as referenced in the GAO report, ''. . . little information is available on the frequency with which students incur ATM, PIN, and other fees, and the total amount of college card fees paid by students is unknown.'' [167] Additionally, in an August 2014 report, Consumers Union stated that ''[s]ummaries of key contract provisions, including fees and revenue-sharing agreements, should be prominently and publicly disclosed on school Web sites.'' [168] Furthermore, OIG recommended that the Department ''[d]evelop regulations that require schools to compute the average cost incurred by students who establish an account with the servicer and at least annually disclose this fee information to students.'' [169]

During negotiations, non-Federal negotiators representing students and State attorneys general also encouraged the Department to add a provision requiring the release of a summary of the contract and ''include in the summary form the fees imposed on sponsored accounts, the actual payments made in connection with the agreement, and the value of in-kind services provided to schools by third-party providers.'' [170] Many negotiators also argued that, in many cases, a summary of the terms of the contract and the fees that a student or parent incurred could be more useful to individual consumers than the release of the full contract, and there was little contention over the idea that a summary of the contract could be released.

As a result of these discussions, the final draft of the Department's proposal circulated at the fourth session contained a provision that would have required the disclosure of a contract summary. This latter draft would have required institutions to disclose the name of the financial institution offering the account and the third-party servicer or other parties involved in opening or enabling the account; whether the contract or arrangement provided for revenue sharing or royalty payments, and, if so, the nature and amount of that compensation; whether the account was a checking account, prepaid debit card, or other type of account; any fees or charges associated with the account; the number of allowable out-of-network surcharge-free ATM transactions; the network of surcharge-free ATMs available, indicating all the names associated with the network, the approximate number of available ATMs in that network both nationally and locally, and the number and location of surcharge-free ATMs on campus (if any) and their hours of accessibility, and a publicly accessible online ATM locator to search for in-network ATMs; and the total number of students and parents with an account and the average amount of fees paid by students and parents who had the account during the most recently completed award year or twelve-month period.

However, to reduce burden on institutions, we propose in these regulations that an institution must only provide to the Secretary, with respect to a contract summary provided under a T1 or T2 arrangement:

- The total consideration for the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract;
- The number of students and parents who had financial accounts under the contract at any time during the most recently completed award year; and
- The mean and median of the actual costs incurred by those account holders.

We believe that these proposed disclosures address the transparency issues raised by GAO, OIG, and others since the key information most commonly called for by advocates will now be available to the public, as well as the full contract, except for the redactions allowed, none of which concern consumer information.

Publication of Contracts and Contract Summaries in a Centralized Database

Current Regulations: None.

Proposed Regulations: Proposed § 664.164(e)(2)(vi) and § 664.164(f)(4)(iv) require institutions to submit the URL of the Web page where the contracts and contract summaries are posted to the Secretary. The Secretary will then make those URLs publicly available.

Reasons: During negotiated rulemaking, non-Federal negotiators argued that ''transparency through centrally collecting the contracts is necessary to ensure compliance issues, to empower colleges to negotiate even better deals for students over time, and to track trends that may elude the individual consumer.'' [171] Consumers Union has also called for the submission of ''full campus banking contracts and the accompanying summaries to the Department for collection in a publicly-accessible central database,'' [172] and USPIRG has stated that contracts with third-party servicers ''should always be publically available in an easily accessible database.'' [173] We agree with the non-Federal negotiators, Consumers Union, and USPIRG regarding the importance of a centralized database containing each institution's URL where contracts and their summaries are posted, and we have added this provision to the proposed regulations.

[167] GAO at 23.

[168] Consumers Union at 20.

[169] OIG at 15.

[170] Lindstrom and Martindale. ''Memo to Negotiated Rulemaking Committee.'' [Page 2] (2014), available at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii3-lind-mart-cashmgmt-040214.pdf.* With subsequent references ''Lindstrom and Martindale April 2 Memo at [page number].''

[171] Lindstrom. Memo to Negotiated Rulemaking Committee. [Page 2] (2014), available at *www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html.* With subsequent references ''Lindstrom April 22, 2014 Memo [page number].''

[172] Consumers Union at 20.

[173] USPIRG at 30.

Best Financial Interests of Account Holders (§ 668.164(e)(2)(vi)–(vii) and § 668.164(f)(4)(vi)–(vii))

Current Regulations: Current § 668.82(a) states that a participating institution or a third-party servicer that contracts with that institution acts in the nature of a fiduciary in the administration of the title IV, HEA programs. To participate in any title IV, HEA program, the institution or its servicer must at all times act with the competency and integrity necessary to qualify as a fiduciary.

Current § 668.14(b)(4) requires that a school establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under the title IV, HEA programs.

Proposed Regulations: Proposed § 668.164(e)(2)(vi) and § 668.164(f)(4)(vi) would require institutions that have a T1 or T2 arrangement to ensure that the terms of accounts offered under such arrangements are not inconsistent with the best financial interests of the students and parents opening them. To comply with this provision, an institution would be required to meet three requirements: (1) It must document that it periodically conducts reasonable due diligence reviews to ascertain whether the fees imposed under the arrangement are, considered as a whole, not excessive in light of prevailing market rates; (2) it must ensure that all contracts for the marketing or offering of accounts to the institution's students or parents, pursuant to a T1 or T2 arrangement, provide that the institution may terminate the arrangement based on complaints received or a determination that the fees imposed under the arrangement are excessive; and (3) it must take affirmative steps, including contractual arrangements if necessary, to ensure the requirements of proposed § 668.164 are met.

Reasons: The preceding sections of the preamble discussion have documented a wide range of troubling practices by some institutions and their associated financial entities. However, the practices themselves are not the only disturbing aspect of the proliferation of campus card agreements—so too are the motivations that have led to the agreements, especially given the role of institutions as the conduits for payment of Federal funds awarded to students.

The GAO stated that it remains concerned that benefits to institutions, especially in the form of contractual remuneration, may ''motivate schools to encourage the use of college cards or potentially choose the arrangement that provides the schools the most revenue rather than one that provides students the best terms.'' [174] We believe that a school entering into such arrangements should not be prohibited from realizing benefits; however, the pursuit of any such benefits must be subordinate to serving the best financial interests of the students and parents opening the accounts. Absent a requirement for schools to negotiate with the best interests of students in mind, we believe that agreements between institutions and servicers pose potential conflicts of interest that could encourage institutions to prioritize revenue or other benefits ''at the expense of student interests.'' [175]

The failure on the part of some institutions to negotiate arrangements that serve the best financial interests of the students opening the accounts is troubling. At the institutions it reviewed, OIG found that officials did not even attempt to negotiate better terms on behalf of their students and instead accepted the preexisting fee schedules offered by the financial account providers. In justifying this approach, officials stated that they felt a student's relationship with a financial institution was separate from the relationship with the institution.[176] Considering the practices identified in the student and parent choice section of the preamble and given the fact that many students assume that the co-branding of an access device implies an institutional endorsement, we think this ''separate relationship'' presumption is incorrect. Choosing not to negotiate on behalf of students while enjoying the remuneration from financial account providers takes advantage of the institution's position as a conduit for Federal payments to the benefit of the institution and the financial institution, and at the expense of inexperienced students' and contrary to the institution's fiduciary role.

We are confident that postsecondary institutions can negotiate appropriate terms on behalf of their students, especially for products intended to be marketed to title IV recipients. Indeed, one of the institutions reviewed by OIG that initially declined to negotiate better terms on behalf of its students later did so after receiving numerous student complaints about PoS fees; after negotiations, the school was able to successfully eliminate PoS fees for students.[177]

This institution's experience helps to substantiate USPIRG's argument that colleges have an advantageous negotiating position because they control access to a lucrative student market—and they therefore have the ability to negotiate on behalf of their students.[178] In a NACUBO survey released following the USPIRG report, about 77 percent of institutions said they do consider fees when selecting their vendor and about 60 percent said they use a competitive bidding process.[179] While this is not a universal practice (and indeed, its absence on some campuses may explain the different fees students at various institutions face), the relatively high proportion of institutions that engage in a competitive bidding process would indicate that this is a practice all institutions could engage in with little additional burden.

Finally, in an effort to address this problem during negotiated rulemaking, negotiators representing State attorneys general submitted a proposal to require ''institutions to base decisions to enter into such arrangements solely on consideration of the best interest of students,'' [180] believing that this ''would help to address possible unforeseen changes in the industry by ensuring that no matter what financial services or products are offered, schools place students' best interests above the schools' interests.'' [181] We agree, but we also believe that institutions need and deserve guidance as to what is expected of them under such a standard. In that regard, the proposed regulations would require institutions to conduct, at reasonable intervals, a due diligence review of the fees assessed at reasonable intervals, while leaving flexibility as to the particular types and amounts of charges entailed as long as the account is competitive in its financial terms overall. The proposed regulations are also designed to remove contractual impediments to ensure that arrangements serve the best financial interests of student account holders. Specifically, they would ensure an opportunity for early termination of an arrangement where the financial institution has failed to provide a

[174] GAO at 29.

[175] OIG at 5.

[176] Ibid. at 14.

[177] Ibid.

[178] USPIRG at 24.

[179] NACUBO at 2.

[180] Fast and Wojewoda.'' Memo to Negotiated Rulemaking Committee.'' [Page 1] (2014), available at *www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii3-fast-cashmgmt-04022014.pdf.* With subsequent references ''Fast and Wojewoda April 2 Memo [page number].''

[181] Ibid.

competitive fee structure or has otherwise provoked substantial complaints from student and parent account holders. The proposed regulations are also designed to prevent the wholesale delegation of institutional responsibilities to contractors, so that institutions remain accountable. We believe that regulations requiring institutions to consider the best financial interests of students when evaluating their T1 and T2 arrangements can serve as a useful tool in eliminating many troubling practices. We invite comment on the methods proposed to evaluate whether a T1 or T2 arrangement is or remains in the best financial interests of students and invite comment on alternative methods that accomplish this objective.

Ownership of Student or Parent Financial Accounts ((§ 668.164(g))

Current Regulations: None.

Proposed Regulations: The proposed regulations would require institutions that offer financial accounts offered pursuant to T1 or T2 arrangements to ensure that those financial accounts meet the requirements of either 31 CFR 210.5(a) or (b)(5), as applicable.

Reasons: The cross-referenced Treasury regulations require that an Automated Clearing House ''federal payment,'' defined in such a way as to include payment by EFT of title IV funds to parents and students, be deposited in a deposit account that is either in the name of the recipient, or, if the recipient accesses the funds by prepaid card, meets the following requirements:

(A) The account is held at an insured financial institution;

(B) The account is set up to meet the requirements for deposit insurance under 12 CFR part 330, or share insurance in accordance with 12 CFR part 745, such that the funds accessible through the card are insured for the benefit of the parent or student by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund;

(C) The account is not attached to a line of credit or loan agreement under which repayment from the account is triggered upon delivery of the Federal payments; and

(D) The issuer of the card complies with all of the requirements, and provides the holder of the card with all of the consumer protections, that apply to a payroll card account under the rules implementing the Electronic Fund Transfer Act, as amended.

While the requirements under 31 CFR 210.5 pertain specifically to federal payments made through the Automated Clearing House network, we believe that to ensure such protections are extended to students, they should apply to all financial accounts an institution includes in its student choice process under proposed paragraph § 668.164(d).

Retroactive Payments (§ 668.164(k))

Current Regulations: None.

Proposed Regulations: Proposed § 668.164(k) provides that if an institution did not make a disbursement to a student who was enrolled and eligible for a payment period the student completed in the current year or loan period (for example, because of an administrative delay or a delay in processing or receiving the student's ISIR), the institution may make the disbursement to the student for a payment period in the current year or loan period.

Reasons: A student should receive all the title IV, HEA program funds he or she is eligible to receive for the current year or loan period, despite any delays in disbursing those funds to the student. These provisions codify in regulations existing Department and institutional practices.

Student or Parent Authorizations (§ 668.165)

Current Regulations: Current § 668.165(b)(1)(ii) provides that the Secretary may prohibit an institution from obtaining a student's or parent's authorization to hold credit balance funds if the institution receives title IV, HEA program funds under the reimbursement or cash monitoring payment methods. With the student's or parent's written authorization, an institution that is not prohibited from holding credit balance funds may issue a stored-value card or other similar device that allows the student or parent to access those funds at his or her discretion to pay for educationally related expenses.

Proposed Regulations: Proposed § 668.165(b)(1)(ii) specifies that when the Secretary provides title IV, HEA program funds to an institution placed on the reimbursement payment method or the heightened cash monitoring payment method described in § 668.162(c)(2) or § 668.162(d)(2), respectively, the institution may not hold credit balance funds.

Reasons: As discussed more fully under the heading ''Reimbursement and cash monitoring payment methods,'' an institution that receives title IV, HEA program funds under the reimbursement or heightened cash monitoring payment method must show that it paid any credit balances due to students and parents before the Department approves the institution's request for reimbursement. Because the Department typically places an institution on reimbursement or heightened cash monitoring for material financial or compliance issues, we do not believe it is appropriate to allow that institution to circumvent the requirement that it directly pay credit balances to students and parents by obtaining authorizations to hold those credit balance funds. We note that this is prohibition would apply uniformly to all affected institutions, rather than only those institutions notified by the Secretary.

Severability (§ 668.167)

Current Regulations: None.

Proposed Regulations: Proposed § 668.167 would make clear that, if any part of the proposed regulations is held invalid by a court, the remainder would still be in effect.

Reasons: We believe that each of the proposed provisions discussed in this preamble serves one or more important, related, but distinct, purposes. Each of the requirements provides value to students, prospective students, and their families, to the public, taxpayers, and the Government, and to institutions separate from, and in addition to, the value provided by the other requirements. To best serve these purposes, we would include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Retaking Coursework (§ 668.2)

Current Regulations: The definition of ''full-time student'' in current § 668.2 allows repeated coursework to count towards a student's enrollment status in a term-based program, but does not allow an institution to include either more than one repetition of a previously passed course or any repetition of previously passed coursework due to a student's failure of other coursework.

Proposed Regulations: Proposed § 668.2 would eliminate the provision in the current regulations that prohibits an institution from counting for enrollment purposes any courses that a student previously passed if the student retakes those courses in the same term in which the student repeats a failed course. The proposed regulation would apply to undergraduate, graduate, and professional students.

Reasons: On October 29, 2010, we published in the **Federal Register** final regulations (75 FR 66832), which

included the definition of ''full-time student'' described above. After we published these regulations, institutions with medical, dental, and other similar graduate or professional programs asked whether the limitations on repeated coursework applied to programs above the undergraduate level, noting that students enrolled in these program were often required to repeat the coursework for an entire term if they failed just one course in that term. They also pointed out that students in these programs are only eligible for unsubsidized loans and that denying Federal aid to these students while they were repeating all coursework in the term would result in students relying on less desirable private education loans or withdrawing from these programs.

During the negotiated rulemaking process, some non-Federal negotiators recommended the Department clarify existing regulations for repeating coursework and supported limiting the applicability of the regulations to undergraduate students only. However, other non-Federal negotiators were concerned that, due to the high standards some graduate schools impose on their students, the limitations on retaking coursework should apply to graduate students as well. Based upon these discussions and the recommendations of some of the non-Federal negotiators, the Department proposed to allow an institution to count all of the coursework for a student, at all program levels, who is enrolled in a program using an integrated curriculum that requires a student who failed one course to retake both the failed course and all previously passed coursework to academically progress in the program. The current prohibition against counting more than one repetition of a previously passed course would remain.

The Department also clarified that the revised regulation would apply to undergraduate, graduate, and professional students.

The Department received tentative agreement from all members of the negotiating committee on the proposed changes to the regulations.

Clock-to-Credit Hour Conversion (§ 668.8(k))

Current Regulations: Under § 668.8(k)(1), certain undergraduate educational institutions are required to use a specified clock-to-credit hour formula to determine the number of credit hours in a program. However, even if a program is offered in credit hours and the number of credit hours in the program is determined in accordance with the conversion formula in § 668.8(l), the program must still be treated as a clock hour program for title IV, HEA purposes under § 668.8(k)(2) if (1) it is required to measure student progress in clock hours to receive State or Federal approval or licensure to offer the program, or for graduates to apply for licensure or the authorization to practice the occupation that the student is intending to pursue, (2) the credit hours in the program do not comply with the definition of a ''credit hour'' in 34 CFR 600.2, or (3) the institution does not offer all the underlying clock hours that are the basis for the credit hours and generally requires attendance in the clock hours that are the basis for the credit hours awarded.

Under § 668.8(k)(3), the Federal and State approval provisions in § 668.8(k)(2)(i) that make a program a clock hour program do not apply if the program has a State or Federal approval or licensure requirement that a limited component of the program must include a practicum, internship, or clinical experience that is required to be measured in clock hours.

Proposed Regulations: We are proposing to eliminate §§ 668.8(k)(2) and (k)(3), and to make a conforming change in § 668.8(l), to streamline the requirements governing clock-to-credit hour conversions, mitigate confusion about whether a program is a clock or credit hour program for title IV, HEA program purposes, and remove the provisions under which a State or Federal approval or licensure action could cause the program to be measured in clock hours.

Reasons: The Department has received many questions regarding the clock/credit hour regulations, particularly as they relate to State requirements. We do not wish or intend to interfere with State requirements relating to program delivery or the number of credit or clock hours a State recognizes or requires for its purposes. For title IV, HEA program purposes, we believe that the conversion formula alone is sufficient to ensure that clock hours are appropriately converted to credit hours without regard to any State requirement or role in approving or licensing a program. In addition, eliminating these provisions simplifies the regulations. The negotiators reached tentative agreement on the regulatory language in § 668.8(k), as well as on the conforming change in proposed § 668.8(l).

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Introduction

As more colleges and universities enter into agreements with financial institutions and third-party servicers to assist in the disbursement of financial aid to students, we believe it is necessary to address the troubling practices discussed more fully in the preamble. Concerns regarding the marketing strategies, lack of transparency, and financial incentives contained in contractual relationships between colleges and universities and financial institutions have arisen as colleges adopt new strategies to save costs. We propose to amend the current cash management regulations to address this changing marketplace. By doing so, the Department believes that these current arrangements, along with future arrangements, will be more beneficial and transparent to students and other parties.

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

This Regulatory Impact Analysis is divided into six sections. The ''Need for Regulatory Action'' section discusses why amending the current regulations is necessary.

The ''Summary of Proposed Regulations'' briefly describes the amended changes the Department is proposing in these regulations. The proposed regulations amend the cash management regulations, along with two issues unrelated to cash management: Retaking coursework and clock-to-credit-hour conversion.

The ''Discussion of Costs, Benefits, and Transfers'' section considers the cost and benefit implications of the proposed regulations for students, parents, financial institutions, and postsecondary institutions. Specifically, we considered the costs and benefits of interest-bearing bank accounts, accounts offered under T1 and T2 arrangements, retaking coursework, and clock-to-credit-hour conversion.

Under ''Net Budget Impacts,'' the Department presents its estimate that the proposed regulations would not have a significant net budget impact on the Federal government.

In ''Alternatives Considered,'' we describe other approaches the Department considered for key provisions of the proposed regulations, including prohibiting an institution from including books and supplies as part of tuition and fees; requiring an institution to obtain consent to open an account before sharing the student's or parent's information with a servicer; allowing an institution to send a debit card, prepaid card, or access device associated with the account to a student or parent only after the student or parent specifically requests it after providing consent to open an account; and additional disclosures relating to contracts between postsecondary institutions and financial institutions.

Finally, the ''Initial Regulatory Flexibility Analysis'' considers the effect of the proposed regulations on small entities.

Need for Regulatory Action

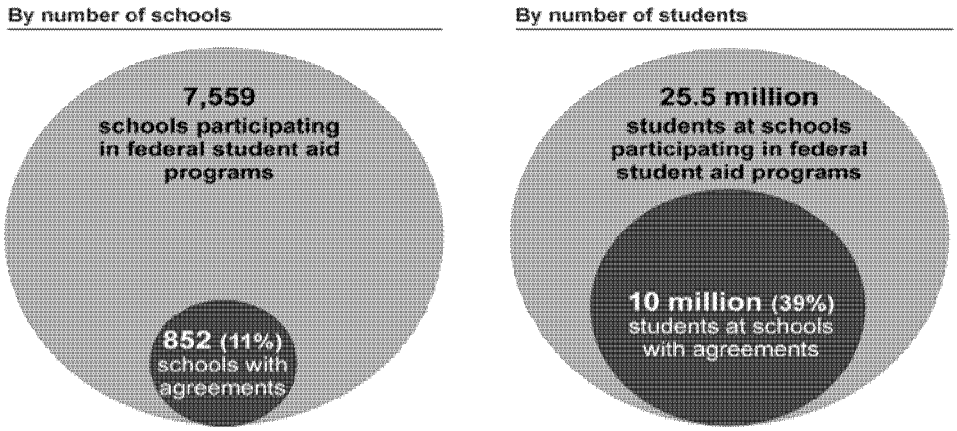
Executive Order 12866 emphasizes that ''Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' In this case, there is indeed a compelling public need for regulation. The Department's main goal in promulgating the proposed regulations is to address major concerns regarding the rapidly changing financial aid marketplace wherein financial products are offered to students who receive title IV, HEA credit balances.

Several changes in the student financial aid marketplace make the proposed regulations necessary. The number of institutions entering into these agreements continues to increase. For institutions, these agreements save money on administrative costs that they would otherwise incur in disbursing title IV credit balances to students. While a convenient option, we are concerned about some of the practices employed by financial institutions and third-party servicers in connection with these agreements. Some of these practices include requiring or giving preference to college card accounts over preexisting accounts, implying that the only way to receive Federal student aid is through college card accounts, allowing private student information to be made available to card providers without student consent, and imposing uncommon and confusing fees on aid recipients accessing their funds. These practices, along with others discussed in the preamble, reduce the amount of title IV aid available for educational expenses.

These practices are particularly disturbing because of the number of students impacted. While data on credit card agreements and credit balances is scarce, a GAO report from July 2013 identified 852 postsecondary institutions (11 percent of all schools that participate in the title IV programs) that had college card agreements in place. While 11 percent is a small percentage of total title IV participating schools, these schools had large enrollments, making up about 39 percent of all students at schools participating in title IV programs.[182]

[182] GAO at 9.

Chart 1: College Card Agreements by Number of Schools and Number of Students that Participate in Federal Student Aid Programs.[183]

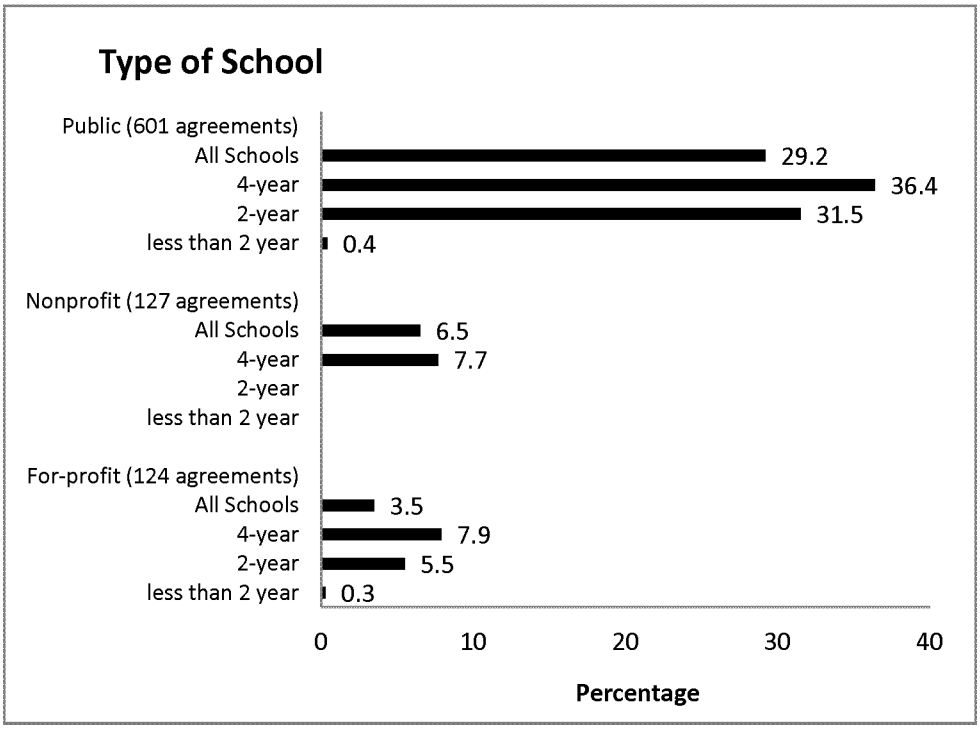


The GAO report also found that college card agreements were most common at public postsecondary institutions, where 29 percent of public schools had card agreements compared to not-for-profit schools with 6.5 percent and for-profit schools with 3.5 percent (see table [1]). Comprehensive data do not currently exist for the number of students who choose to enroll in a college card. However, the GAO report found that public two-year institutions represented almost half of all schools that used college cards to make financial aid payments.[184] Public two-year institutions' students are most likely to receive a financial aid payment (credit balance) due to the low tuition and fees deducted from total aid received.

[183] Ibid. at 10.

[184] Ibid.

Table 1: Percentage of Schools with College Card Agreements by Sector and Program Length, as of July 2013.[185]



Given the number of students affected by college card agreements, according to the data available, the questionable practices of the providers, and the amount of Federal funds at stake, we believe amending the regulations governing title IV student aid disbursement is warranted. We welcome public comments on comprehensive data sources or data sources on financial institutions and third-party servicers that may be available for further analysis.

Summary of Proposed Regulations

The Department proposes to amend the cash management regulations under subpart K and other sections of the Student Assistance General Provisions regulations issued under the HEA. The proposed regulations are intended to ensure students have convenient access to their title IV, HEA program funds, do not incur unreasonable and uncommon financial account fees for accessing their title IV funds, and are not led to believe they must open a particular financial account to receive their Federal student aid. In addition, the proposed regulations update other provisions in the cash management regulations under subpart K and otherwise amend the Student Assistance General Provisions. We also propose to clarify how previously passed coursework is treated for title IV eligibility purposes and streamline the requirements for converting clock hours to credit hours. The table below briefly summarizes the major provisions of the proposed regulations.

Provision	Reg section	Description of provision	
		T1	T2
Defines T1 and T2 arrangements between institutions and financial account providers.	§ 668.164(e) ..... § 668.164(f)	Arrangement between an institution and a third-party servicer that performs one or more of the functions associated with processing direct payments of title IV funds on behalf of the institution and that offers one or more financial accounts to students and parents.	Arrangement between an institution and a financial institution or an entity allied with a financial institution under which financial accounts are offered and marketed directly to students or their parents.
Fee mitigation	§ 668.164(e)(2)(iii)(B)(2) ..... § 668.164(e)(2)(iv)	Prohibits point-of-sale and overdraft fees.	Not Applicable.

[185] Ibid. at 11.

		Applicable to Entities with T1 or T2 Arrangements
Reasonable access to funds	§ 668.164(c)(3) § 668.164(e)(2)(iii)(A)	Requires reasonable access to surcharge-free ATMs or a surcharge-free ATM network.
Student choice process	§ 668.164(d)(4)(i)	Requires institutions to establish a student choice process that: • Prohibits institution from requiring students or parents to open a specific financial account to receive credit balances. • Provides the student a list of options for receiving credit balance funds with each option presented in a neutral manner. • Lists pre-existing accounts as the first, most prominent, and default option. • Establishes that an aid recipient has the right to receive funds to pre-existing accounts. • Specifies that electronic payments made to pre-existing accounts are as timely as and no more onerous than payments made to another account on the list of options.
Consent to open account	§ 668.164(e)(2)(i) and (f)(4)(i)	Student or parental consent required to open account and before: • Providing information about student or parent to financial account provider. • Sending access device to student or parent. • Associating student ID with a financial account.
Contract disclosure	§ 668.164(e)(2)(V)(A) § 668.164(f)(4)(iii)(A)	Public disclosure of contracts governing arrangements and related cost information.
Contract interpretation		Requires institutions to establish and evaluate T1 and T2 arrangements in light of the best interests of students.
		Additional Provisions
Secretary's reservation of right		Confirms that the Secretary reserves the right to establish a method for directly paying credit balances to student aid recipients.
Retention of interest on accounts holding title IV funds.	§ 668.163	Increases from $250 to $500 the amount of interest accrued in accounts holding title IV funds non-Federal entities are allowed to retain annually.
Retaking coursework	§ 668.2	Eliminates, for all program levels, the prohibition on counting towards enrollment repeated courses taken in the same term in which the student repeats a failed course. The current prohibition against counting more than one repetition of a previously passed course would remain.
Clock-to-credit-hour conversion	§ 668.8(k)	Eliminates § 668.8(k)(2) and (k)(3) and makes a conforming change in § 668.8(l), to streamline the requirements governing clock-to-credit-hour conversions, mitigate confusion about whether a program is a clock- or credit-hour program for title IV, HEA program purposes, and remove the provisions under which a State or Federal approval or licensure action could cause the program to be measured in clock hours.

Discussion of Costs, Benefits, and Transfers

We expect the effects of the proposed regulations would include improved information to facilitate consumer choice of financial accounts for receiving title IV credit balance funds, reasonable access to title IV funds without fees, a transfer of some types of fee income among students, institutions, and financial institutions, updated cash management rules to reflect current practices, streamlined rules for clock-to-credit-hour conversion, and the ability of students to receive title IV funds for repeat coursework in certain term programs. Students, institutions, and third-party servicers and the financial institutions that have contractual relationships described as T1 and T2 arrangements would be most affected by the proposed regulations.

Data and Methodology

In an attempt to quantify some of the costs and to reduce the burden associated with the proposed regulations, the Department analyzed its own data to estimate the prevalence of credit balances. While there may be instances where financial institutions have an agreement with a postsecondary institution to offer college card accounts to students who do not receive credit balances, the proposed regulations focus on accounts offered under T1 or T2 arrangements where students have a credit balance.

While comprehensive data on the number of students who receive credit balances on a college card do not currently exist, we attempted to calculate the incidence and distribution of credit balance recipients. We analyzed the data maintained by the Department to estimate the number of students who would potentially be affected by the proposed regulations and to evaluate whether, in order to reduce burden, we could establish a de minimis threshold below which an institution would not be subject to the T2 requirements by analyzing the percentage of students with a credit balance at various institutions.

The numbers of students who received title IV aid in the 2013–2014 school year (from the National Student Loan Data System (NSLDS) of the Department's Office of Federal Student Aid (FSA)) were matched by institution to data from the Integrated Postsecondary Education Data System (IPEDS) for tuition, fees, and room and board. The credit balance calculation established an institutional cost that included an estimated average tuition, fees, and room and board amount (which took into account the percentage of students who lived in-district, in-state, and out of state for tuition and fees expense, and the percentage of students who lived on-campus for room and board charges). Aid recipients were grouped by the amount of aid received (rounded into $500 ranges). For each institution, the students in the aid ranges above the estimated institutional cost were considered to have a credit balance. We then used the number of

those students to obtain a percentage of students who received a credit balance at each institution. For example, if the institutional cost was determined to be $12,456 and 50 of 150 title IV aid recipients were in the buckets from $12,500 and above, approximately 33 percent of aid recipients at that institution were considered to have a credit balance.

We looked only at title IV participating institutions and aid recipients. From the data obtained, 3,400 institutions had both tuition estimates and aid recipient information. Unsurprisingly, there is an inverse relationship between an institution's tuition and fees and the percentage of students receiving a title IV credit balance. Our findings were consistent with findings from GAO and USPIRG. Based on our data, we estimated that 2,816,104 students at these 3,400 institutions were receiving a credit balance. The Department's data showed 70 percent of total students receiving a credit balance were at public two-year institutions (1,972,035 students). While we estimated that that there was a significant number of students who received a credit balance at all of the four-year institutions, the students at four-year institutions combined (819,062) still did not equal half the total number of students who received a credit balance at public two-year institutions (Table [2]). The number of students who received a credit balance was lowest at the less-than two-year institutions, which represented approximately 1.8 percent of institutions and under 1 percent of students who received a credit balance from the 3,400 institutions with both tuition and fee and financial aid data.

TABLE 2—NUMBER OF INSTITUTIONS AND STUDENTS WITH A CREDIT BALANCE

Sector	Number of institutions	Students with a credit balance
Public, 2-year	912	1,972,035
Public, 4-year or above	625	540,461
Private for-profit, 4-year or above	195	181,530
Private not-for-profit, 4-year or above	1,297	97,071
Private for-profit, 2-year	212	19,436
Private not-for-profit, 2-year	97	3,699
Public, less-than 2-year	20	877
Private for-profit, less-than 2-year	32	863
Private not-for-profit, less-than 2-year	10	132
Total	3,400	2,816,104

As several provisions of the proposed regulations apply to institutions with T1 or T2 arrangements, utilizing publically available sources and working with CFPB, we identified a listing of institutions that were known to have card agreements with financial institutions and applied the same methodology described above to this subset of institutions.[186] Of these known 914 institutions with card agreements, 672 institutions had both tuition and fees and aid recipient data in the Department's dataset. A total of 1,322,615 students at the 672 institutions from this dataset were estimated to have a credit balance. The results from this subset were similar to the larger dataset. The public two-year institutions had the largest numbers of students with a credit balance, and the four-year institutions also had significant numbers (See Table [3]). The less-than two-year institutions had inconclusive data. Again, this subset provided no additional information on a clear de minimis amount.

TABLE 3—STUDENTS WITH A CREDIT BALANCE AT INSTITUTIONS KNOWN TO HAVE CARD AGREEMENTS

Sector	Number of institutions	Students with a credit balance
Public, 2-year	304	996,107
Public, 4-year or above	200	280,467
Private for-profit, 4-year or above	38	29,593
Private not-for-profit, 4-year or above	113	10,001
Private for-profit, 2-year	17	6,447
Private not-for-profit, 2-year	N/A	N/A
Public, less-than 2-year	N/A	N/A
Private for-profit, less-than 2-year	N/A	N/A
Private not-for-profit, less-than 2-year	N/A	N/A
Total	672	1,322,615

[186] Based on information available at financial institution Web sites including:

http://www.higheronecard.com/landing/start.jsp

https://www.pnc.com/en/personal-banking/banking/student-banking.html

https://www.usbank.com/student-banking/campus-partners/index.html

http://na.enroll.citiprepaid.com/login/logindisplay.do

http://www.siue.edu/bursar/CitiFeeSched.shtml

http://www.broward.edu/financialaid/Pages/Refund-Information.aspx

http://www.citibank.com/transactionservices/home/public_sector/higher_edu/docs/maricopa_case_study.pdf

http://fsucard.fsu.edu/suntrust-banking

http://www.southwestgatech.edu/Content/Default/6/1700/0/financial-aid/swgtc-preloaded-financial-aid-debit-card.html

http://www.tcfbank.com/account_campus-banking_disclosure.aspx.

In a final attempt to analyze the data, the Department took the subset and identified only those institutions that had a T2 arrangement. This narrowed down the data to 191,242 students at 160 institutions. The identified institutional data was further analyzed by sector with data available for public two-year, public four-year or above, and private not-for-profit, four-year or above institutions. The data was similar to the larger datasets (see Table [4]) and produced inconclusive results on a threshold to reduce burden.

TABLE 4—STUDENTS WITH A CREDIT BALANCE AT INSTITUTIONS KNOWN TO HAVE T2 ARRANGEMENTS

Sector	Number of institutions	Students with a credit balance
Public, 2-year	36	135,108
Public, 4-year or above	70	56,066
Private not-for-profit, 4-year or above	54	68
Total	160	191,242

As described in the Data and Methodology section, we analyzed the available data to determine if we could identify a clear percentage threshold or minimum number of students who had a credit balance before the proposed regulations relating to T2 arrangements would apply. We believed that applying a threshold amount would reduce the burden on institutions where small percentages of students received a credit balance. However, we could not conclusively identify a clear cut-off amount as the data was evenly distributed in each of the datasets and subsets we analyzed. We request comment on whether we should establish a de minimis amount and, if so, what that amount should be, supporting data, and how this amount should be established.

We also reviewed reports related to campus card use for information on affected students and their account usage patterns. The GAO, USPIRG, and Consumers Union, among others, have analyzed the issue of student accounts and the use of college cards. Results from those reports that were used in the Department's calculations are noted in the discussion of specific provisions throughout this section.

Fee-Related Provisions Applicable to Institutions With T1 Arrangements

Institutions with T1 arrangements are required to mitigate fees incurred by student aid recipients by prohibiting PoS and overdraft fees charged to students and parents. Additionally, these institutions must ensure that students have surcharge-free access to a national or regional ATM network that has ATMs on or near each campus of the institution. Little information is currently available on the total amount of college card fees paid by students. Most financial account providers are unwilling or unable to provide information on fees to the Department. The GAO report reviewed fee schedules from eight financial institutions and found that while college cards do not have monthly maintenance fees, fees for out-of-network ATM use, wire transfers, and overdraft fees were similar to the financial products marketed to non-students. Credit unions' fees were typically lower than those charged by college cards (see Table [5]). However, college card fees were lower than alternative financial products, such as check-cashing services.[187]

TABLE 5—ACCOUNT FEES BY PROVIDER TYPE [188]

Fee	College cards	Large banks, general checking accounts	Credit unions
Monthly Maintenance	$0	standard account: $6–$12 student account: $0–$5	$0
Out-of-network ATM Transaction	$2–$3	$2–$2.50	1
PIN	$0–$0.50	$0	0
Overdraft	$29–$36	$34–$36	25
Outgoing Wire Transfer	$25–$30	$24–$30	15

While we do not know the total amount of college card fees paid by students annually, we do know the amounts are substantial. A review of the annual SEC filings by one market participant, Higher One, indicates that account revenue from a variety of fees totaled $135.8 million in FY 2013, which represented 64.3 percent of total revenues for FY 2013.[189] Not all of those fees would be subject to the provisions of the proposed regulations, but the amount of student account revenue across the industry affected by the proposed changes would be significant.

In addition to the uncertainty regarding the total amount of college card fees paid by students, consumer behavior is unpredictable, and the responses of students and parents to the proposed disclosures about account options and costs will significantly contribute to the effect of the proposed regulations. While it is assumed that consumers with appropriate information will make rational decisions, such as avoiding fees imposed on withdrawals from out-of-network ATMs or debit transactions that require a PIN rather than a signature, some students may not make the optimal choices in managing their accounts. We do not have data on the distribution of students in accounts with specific fee arrangements, student usage patterns, or the responsiveness of students to the information that would be provided under the proposed regulations, and therefore it is difficult to estimate the exact transfers that would occur if certain fees on student accounts were prohibited. However, there is some third-party analysis of account usage that can be used to establish a range of possible effects of the proposed regulations. In its August

[187] Ibid. at 18.

[188] Ibid. at 19.

[189] Higher One Holdings, Inc. ''SEC Form 10–K.'' [Pages 41–42] (2014), available at *www.sec.gov/Archives/edgar/data/1486800/000148680014000018/one10k.htm.*

2014 report, Consumers Union developed minimal, moderate, and heavy usage profiles and determined that the accounts it analyzed would cost minimal users from $0 to $59.40, moderate users from $10.20 to $95.00, and heavy users from $59.40 to $520.00 on an annual basis.[190] This range of outcomes demonstrates how the distribution of students in accounts and the student response to account information disclosed under the proposed regulations would affect the fee revenue transfers under the proposed regulations.

An additional analysis by U.S. PIRG included data on overdraft behavior by age range with adults in the 18–25 age range having the highest incidence of paying overdraft fees with 53.6% paying zero, 21.5 percent paying 1 to 4, 10.3 percent paying 5–9, 7.9 percent paying 10 to 19, and 6.8 percent paying 20 or more overdraft fees.[191] While not all students will fall within this age range, given the high percentage of adults in this age range that pays at least one overdraft fee and the amount of overdraft fees ranging from $25 to $38 when applied, the revenue affected by the overdraft fee prohibition is significant. Further analysis recently released by the Center for Responsible Lending analyzed similar data on overdrafts for adults in three categories and found average annual costs in overdraft fees of $67 for the 15 percent of young adults with two overdrafts per year, $264 for the 13 percent of adults with seven overdrafts per year, and $710 for the 11 percent of adults that overdraw about 19 times per year.[192]

Another element that complicates the analysis of the effects of the proposed regulations is the response of financial institutions and institutions. The proposed fee limitations relating to T1 arrangements would have cost implications for affected servicers. One purpose of the proposed regulations is to allow students to access financial aid funds without burden from fees or other costs; however we acknowledge that many third-party servicers in T1 arrangements could restructure their accounts to earn some of those funds through fees that would not be affected by the proposed regulations. Over time, as contracts are renewed or entered into, financial institutions could also increase the revenue they receive from institutions, but the split between the revenue that can be recaptured and that which might be lost to financial institutions is not estimated in this analysis.

Disclosure Provisions and Student Choice

As noted in the Summary of Proposed Regulations section, under the proposed regulations, institutions with T1 and T2 arrangements would be subject to several provisions designed to increase the disclosure of information related to student accounts and emphasize the availability of options for students to receive credit balances. We believe this access to account disclosures and other critical information would allow students and parents to make informed decisions regarding the handling and distribution of their title IV funds. The fee and contract disclosures would help students and parents determine whether the financial products marketed by financial institutions with relationships to their school are the best option for them. These disclosures would also help prevent students from being misled into believing that they must use those financial products.

Furthermore, the proposed regulations would require institutions to disclose the prices of books and other materials that they include as part of tuition and fees. We believe this will encourage schools to make one of two student-friendly changes: For schools that cannot justify including the price of books and supplies in tuition charges because it is not in students' best financial interest, students and parents will be able to compare prices to determine if there are other, more economically viable options available and buy materials available in the marketplace. Alternatively, students benefit from the buying power of the school in cases where the school can source the materials for lower-than-market costs.

The proposed regulations would also help protect both students and parents from deceptive marketing practices aimed at encouraging them to do business with a particular financial institution without presenting options. When students are not presented with clear choices or information, they may be pushed into using financial accounts with higher fees or less access than other options available to them. By requiring clear and neutral disclosures to students and parents, the student choice provisions would aid students and parents in identifying accounts with lower fees. Students who select accounts with lower fees would save money and be able to use all or more of their title IV aid for expenses critical to their educational needs.

Reasonable Access to Funds

As noted in the discussion of fee provisions related to T1 arrangements, under the proposed regulations, a third-party servicer with a T1 arrangement would have additional obligations with respect to the requirement that it provide students with convenient access to surcharge free regional or national ATM network. As under the current regulations, financial institutions must provide students convenient access to in-network ATMs. The proposed regulations would clarify that ''convenient access'' means ATMs are sufficient in number at each of the institution's locations such that funds are reasonably available from them. The provisions specifying what constitutes ''convenient access'' are designed for the benefit of students and could have cost implications for some third-party servicers and financial institutions. These servicers/financial institutions could have to deploy new ATMs or pay to be associated with a surcharge-free ATM network to meet these requirements. Students who open accounts under a T1 or T2 arrangement would benefit from having more surcharge-free ATMs from which to access their title IV credit balances.

T2 Arrangements

The direct marketing methods employed by financial institutions, third-party servicers, and postsecondary institutions have proven to be fairly effective. As mentioned earlier in the Need for Regulatory Action section, 10 million students (Chart 1) are at title IV participating schools where card agreements are prevalent. While some information is available about these agreements, it is insufficient to support a comprehensive analysis on the costs of the proposed regulations. We do not have data on the total number of institutions with card agreements with financial institutions or the details of those agreements. There is also a lack of data on the total number of students who receive credit balances and in what form those students receive that aid.

Beyond the data limitations, forecasting the future behavior of students under the proposed regulations also presents another challenge in estimating costs. Students have a variety of choices on how to receive their aid. Based on data from the National Postsecondary Student Aid Study (NPSAS) conducted by the National Center for Education Statistics, we know that a majority of students receive a refund by depositing a refund directly to a bank account (37.2 percent) or by cashing or depositing a refund check at

[190] Consumers Union at 16.

[191] Ibid.

[192] Center for Responsible Lending, ''Overdraft U.: Student Bank Accounts Often Loaded with High Overdraft Fees'', March 30, 2015.

a bank themselves (38.5 percent). The remaining 24.3 percent of students receive refunds by cashing the check somewhere other than a bank, receive refunds on a prepaid debit card, receive a refund through student ID cards, or do something else not listed.[193] While direct marketing affects the choices a student might make, we lack data on predicting whether students would move away from those marketed accounts if all options were clearly presented to them. Consequently, quantifying the costs of the proposed regulations is difficult.

Cash Management Provisions

Interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually. The proposed regulations would increase the amount allowed to be retained by non-Federal entities for administrative expenses from $250 to $500. By doing so, some institutions would see a minor benefit from being able to keep the first $500 in interest accrued on accounts holding title IV funds. Other updates to subpart K reflect technological changes and current practices in managing title IV funds.

Retaking Coursework

The proposed regulations would eliminate provisions that prevent institutions from counting previously passed courses towards enrollment where the repetition is due to the student failing other coursework. This change would benefit a limited number of undergraduate, graduate, and professional students. Students in these circumstances would no longer be denied title IV aid and therefore would be less likely to drop out or need less desirable private education loans to continue their coursework. Institutions and students would benefit as students would be able to continue paying for educational costs with title IV aid.

Clock-to-Credit-Hour Conversion

By streamlining the clock-to-credit-hour conversion provisions, institutions would benefit from the simplification of regulations affecting institutional determinations relating to title IV eligibility.

Net Budget Impacts

We estimate that the proposed regulations would not have a significant net budget impact. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. A cohort reflects all loans originated in a given fiscal year.

The proposed regulations would require institutions to disclose agreements with financial services providers through which students may opt to receive title IV credit balances, and restrict the fees students could be charged for accounts offered pursuant to T1 arrangements. Additionally, the proposed regulations would make technical changes to subpart K cash management rules to reflect technological advances and improved disbursement practices. The proposed regulations also would simplify the clock-to-credit-hour conversion for title IV purposes by eliminating the reference to any State requirement or role in approving or licensing a program. Finally, the proposed regulations would eliminate the provision that prevents institutions from counting previously passed courses towards enrollment where the repetition is due to the student failing other coursework.

Although the proposed regulations would affect the arrangements among institutions, students, and financial service providers, they are not expected to affect the volume of title IV aid disbursed or the repayment patterns of students, and therefore, no significant budget impact on title IV programs is estimated.

We welcome comments on the estimates provided and will consider them in developing the RIA for the final regulations.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in Table [6], we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations.

TABLE [6]—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Benefits
Greater disclosure of arrangements between institutions and financial service providers and clearer disclosure of fees and conditions of student accounts.	Not Quantified.

Category	Costs	
	7% discount rate	3% discount rate
Costs of compliance with paperwork requirements	$21.0	$21.2.

Category	Transfers

Alternatives Considered

As part of the development of the proposed regulations, the Department reviewed and considered various internal proposals, as well as proposals from non-Federal negotiators. In the following paragraphs we summarize the major proposals that we considered but ultimately declined to incorporate in the proposed regulations.

The Department initially considered prohibiting institutions from including books and supplies as part of tuition and fees. However, some of the non-Federal negotiators argued that institutions, for pedagogical or safety reasons, are increasingly developing course-specific or course-embedded materials that students must access and purchase from the school and that those materials should be included in tuition

[193] U.S. Department of Education, National Center for Education Statistics, 2011–12 National Postsecondary Student Aid Study (NPSAS:12).

and fees. After a thorough discussion, the Department decided against a total prohibition on including books and supplies as part of tuition and fees, and agreed to a compromise position that would still benefit students, allow institutional flexibility when materials are integral to the course, and hold institutions accountable through cost transparency.

The Department initially proposed to the negotiated rulemaking committee regulations that would have prevented institutions from sharing with a servicer any information about a student or parent until the student or parent affirmatively consented to open an account. Because the proposals considered during negotiated rulemaking did not separate T1 and T2 arrangements, the ban on information sharing would have affected both third-party servicers and financial institutions.

After multiple negotiation sessions and working with non-Federal negotiators representing third-party servicers, we elected to permit the sharing of only limited information—name, address, and email address—prior to receiving student or parent consent to open an account. We have also decided to apply the limitation to both T1 and T2 arrangements, under definitions more focused than those proposed to the negotiated rulemaking committee.

To clarify our position, we have also altered our phrasing to require that a student or parent must provide consent to actually open an account, rather than simply select an option for receiving direct payments of financial aid before more than this basic contact information with a third-party servicer or financial institution.

After the first negotiated rulemaking session, we proposed provisions that would allow an institution to send a debit card, prepaid card, or access device associated with the account to a student or parent only after the student or parent specifically requests it after providing consent to open an account. We modified this initial approach by removing the requirement for the student or parent to specifically request the card while retaining a requirement that the student or parent consent to opening the account before the card is sent. While we understand that the requirement to obtain consent to open a financial account before sending an access device to a student or parent may slow the speed with which a student or parent could access his or her credit balance, we believe that requiring student or parent consent to an account first helps to dispel the implication that the access device and its associated financial account are required by the institution. We also believe it reinforces the notion that use of the access device and its associated account is, in fact, a choice.

We also considered several proposals regarding the disclosure of the contracts between institutions of higher education and financial institutions, along with contract summaries, as described in other parts of the preamble. However, to reduce burden on institutions, we propose that an institution must only provide to the Secretary, with respect to a contract for a T1 or T2 arrangement, the following information: The total consideration for the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract; the number of students and parents who had financial accounts under the contract at any time during the most recently completed award year; and the mean and median of the actual costs incurred by those account holders.

Initial Regulatory Flexibility Act Analysis

The proposed regulations will affect institutions that participate in the title IV, HEA programs, financial institutions, and individual borrowers. The U.S. Small Business Administration (SBA) Size Standards define ''for-profit institutions'' as ''small businesses'' if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. The SBA Size Standards define ''not-for-profit institutions'' as ''small organizations'' if they are independently owned and operated and not dominant in their field of operation, or as ''small entities'' if they are institutions controlled by governmental entities with populations below 50,000. The revenues involved in the sector that would be affected by the proposed regulations, and the concentration of ownership of institutions by private owners or public systems, means that the number of title IV, HEA eligible institutions that are small entities would be limited but for the fact that the not-for-profit entities fit within the definition of a ''small organization'' regardless of revenue. Given the definitions above, several of the entities that would be subject to the proposed regulations are small, leading to the preparation of the following Initial Regulatory Flexibility Analysis.

Description of the Reasons That Action by the Agency Is Being Considered

Over the past several years, a number of changes have occurred in the student financial products marketplace and in budgets of postsecondary institutions that have led to a proliferation of agreements between postsecondary institutions and ''college card'' providers. These cards, usually in the form of debit or prepaid cards and sometimes cobranded with the institution's logo or combined with student IDs, are marketed to students as a way to receive their title IV credit balances via more convenient electronic means. However, a number of government and consumer group reports have documented troubling practices employed by some of the providers of these college cards. Legal actions against the sector's largest provider further substantiate these reports' findings.

The Secretary proposes to amend the cash management regulations under subpart K and other sections of the Student Assistance General Provisions regulations issued under the HEA, to address the findings in multiple government and consumer group reports that students are not able to conveniently access their title IV, HEA program funds without onerous paper submissions and unnecessary waiting periods, unreasonable and uncommon financial account fees, or receiving misleading information indicating that a particular financial account is required to receive student aid. The proposed regulations also make a number of changes to update subpart K consistent with contemporary disbursement practices. Finally, the proposed regulations update two additional, unrelated provisions: Revising the way previously passed coursework is treated for title IV eligibility purposes so students remain in programs and do not have to find alternatives to title IV funding; and streamlining the requirements for converting clock hours to credit hours.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

Given the number of students affected by these agreements, the amount of taxpayer-funded title IV aid at stake, and the troubling practices and expanding breadth of the college card market, we believe regulatory action governing the manner in which title IV student aid is disbursed is warranted.

In addition, it has been 20 years since subpart K was comprehensively updated, and in that time a number of technological improvements and changes in authorized title IV programs have occurred. We have therefore proposed a number of more minor changes throughout subpart K.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Regulations Would Apply

The proposed regulations would affect institutions, financial services providers, and students. Students are not considered small entities for the purpose of this analysis and the Department does not expect the financial institutions to meet the applicable definition of a small entity. However, a significant portion of institutions of higher education are considered to meet the applicable definition of a small entity, and therefore, this analysis focuses on those institutions. As discussed above, private non-profit institutions that do not dominate in their field are defined as small entities and some other institutions that participate in title IV, HEA programs do not have revenues above $7 million and are also categorized as small entities. Table [7] summarizes the distribution of small entities affected by the proposed regulation by sector.

TABLE [7]—DISTRIBUTION OF SMALL ENTITIES BY SECTOR

	Small entity	Total	%
Public 4-year	0	749	0
Private NFP 4-year	1,648	1,648	100
Private For-Profit 4-year	278	827	34
Public 2-year	0	1,074	0
Private NFP 2-year	162	162	100
Private For-Profit 2-year	667	1,035	64
Public less than 2-year	0	262	0
Private NFP less than 2-year	87	87	100
Private For-Profit less than 2-year	1,411	1,695	83
Total	4,253	7,539	56

The Secretary invites comments from small entities as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The various provisions in the proposed regulations require disclosures by institutions as discussed in the Paperwork Reduction Act section of this preamble. Table [8] summarizes the estimated burden on small entities from the paperwork requirements associated with the proposed regulations.

TABLE [8]—SUMMARY OF PAPERWORK REQUIREMENTS FOR SMALL ENTITIES

Provision	Reg section	OMB control No.	Hours	Costs
Require institutions to establish an account selection process	668.164(d)(4)	1845–0106	3,920	143,276
Compliance with T1 requirements: Provide the terms and conditions of the financial accounts, provide convenient access to ATMs, cannot be converted to a credit instrument, must disclose the contract, must disclose the mean and median costs incurred over the prior year as well as the number of students and parents with these financial accounts	668.164e	1845–0106	6,710	245,251
Compliance with T2 requirements: Must obtain consent to open an account, provide terms and conditions, disclose the contract, the number of students and parents participating, the mean and median actual costs for the prior year	668.164(f)	1845–0106	3,330	121,712
Total			13,960	510,238

Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap, or Conflict With the Proposed Regulations

The proposed regulations are unlikely to conflict with or duplicate existing Federal regulations. We consulted Federal banking regulators at FDIC, OCC and the Bureau of the Fiscal Service at the Treasury Department, and CFPB, for help in understanding Federal banking regulations and the Federal bank regulatory framework. We believe we have crafted these regulations in a way that will complement, rather than conflict with, existing banking regulations. The most significant risk of potential conflict is with respect to account disclosure requirements, described in more detail in the ''*Disclosure of account information*'' section of this preamble.

Alternatives Considered

As described above, the Department participated in negotiated rulemaking when developing the proposed regulations, and considered a number of options for some of the provisions. No alternatives were aimed specifically at small entities.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent

burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents. The table at the end of this section summarizes the estimated burden on small entities, primarily institutions and applicants, arising from the paperwork associated with the proposed regulations.

Section 668.164 contains information collections requirements. Under the PRA, the Department has submitted a copy of this section, and an Information Collections Request (ICR) to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Discussion

Section 668.164 Disbursing Funds

Requirements: Student and parent choice.

Under proposed § 668.164(d)(4)(i), an institution that makes direct payments to a student or parent by EFT and that chooses to enter into an arrangement described in § 668.164(e) or § 668.164(f), must establish a selection process under which the student or parent chooses one of several options for receiving those payments. Alternatively, an institution that does not offer accounts under a Tier 1 (T1) or Tier 2 (T2) arrangement is not required to establish a student choice process and instead, may make direct payments to an existing account designated by the student or parent, issue a check, or disburse cash to the student or parent.

For institutions required to establish a student choice process under proposed § 668.164(d)(4)(i), the proposed regulations would establish requirements that must be met in implementing the process.

The institution must inform the student or parent in writing that he or she is not required to open or obtain a specific financial account or access device in order to receive title IV funds. The institution must ensure that the options listed are presented in a clear, fact-based, and neutral manner (except that a pre-existing account must be listed as the first, most prominent, and default option). The institution must ensure that initiating direct payments electronically to an existing account is as timely as, and no more onerous than initiating direct payments to an account offered pursuant to a T1 or T2 arrangement. The institution must allow the student or parent the option to change his or her account preference with reasonable written notice.

In addition to these requirements for establishing a student choice process, the proposed regulations under § 668.164(d)(4)(i)(B) contain the following provisions governing the description of account options under the student choice process.

The institution must present, prominently and as the first and default option, the ability to receive funds in a student's or parent's pre-existing financial account or pre-existing access device. The institution must list and identify the major features and commonly assessed fees associated with all accounts offered pursuant to a T1 or T2 arrangement (using a format published by the Secretary in the **Federal Register** which would constitute compliance with this provision under the proposed regulations), as well as a Universal Resource Locator (URL) linked to the terms and conditions of these accounts. Finally, the institution must list issuing a check as an option for a student or parent to receive payments.

Burden Calculation: The Department calculated the incidence and distribution of credit balance recipients. The numbers of students who received title IV aid in the 2013–2014 cohort (from FSA) were matched by institution to the IPEDS tuition, fees, and room and board data. The credit balance calculation established an institutional cost that included an estimated average tuition, fees, and room and board amount (which took into account the percentage of students who lived in-district, in-state, and out of state for tuition and fees expense, and the percentage of students who lived on-campus for room and board charges). Aid recipients were grouped by the amount of aid received (rounded into $500 ranges). To determine the number of students at each institution who received a credit balance, we looked at the number of students who fell within the aid ranges above the estimated institutional cost.

We looked only at title IV participating institutions and aid recipients. From the data obtained, 3,400 institutions (out of the total 7,539 participating in title IV, HEA programs) had both tuition estimates and aid recipient information. Unsurprisingly, there was an inverse relationship between an institution's tuition and fees and the percentage of students receiving a title IV credit balance. The Department's findings were consistent with findings from GAO and USPIRG. In an effort to thoroughly analyze all of the available data, we also applied the same methodology described above to a subset of institutions. Utilizing publically available sources and working with the CFPB the Department identified a listing of institutions that were known to have card agreements with financial institutions from CFPB. If commenters have other sources for the number of institutions with these financial agreements, we invite them to provide those sources for our examination. The Department's NSLDS data, when combined with the IPED's data and the CFPB data the list of institutions that were known to have agreements (NSLDS–IPEDS–CFPB) had tuition and fees and aid recipient data for 672 of the 914 institutions identified by CFPB. From the data for 672 institutions, we projected the number of students with a title IV credit balance at the 914 institutions proportionately. As a result, there were a total of 1,798,756 students at the 914 institutions from this dataset who received a credit balance.

Of the 914 institutions with arrangements, the NSLDS–IPEDS–CFPB data show that 685 institutions would be public institutions. On average, we estimate the burden associated with developing and implementing the proposed student and parent choice options would increase by 20 hours per institution and therefore total burden of 13,700 hours (685 institutions times 20 hours per institution) under OMB Control Number 1845–0106.

Of the 914 institutions with financial arrangements, the NSLDS–IPEDS–CFPB data show that 154 institutions would be private not-for-profit institutions. On average, we estimate the burden associated with developing and implementing the student and parent choice options would increase by 20

hours per institution and therefore total burden of 3,080 hours (154 institutions times 20 hours per institution) under OMB Control Number 1845–0106.

Of the 914 institutions with arrangements, the NSLDS–IPEDS–CFPB data show that 75 would be private for-profit institutions. On average, we estimate the burden associated with developing and implementing the student and parent choice options would increase by 20 hours per institution and therefore total burden of 1,500 hours (75 institutions times 20 hours per institution) under OMB Control Number 1845–0106.

Overall, burden to institutions would increase by 18,280 hours (the sum of 13,700 hours, 3,080 hours, and 1,500 hours).

The NSLDS–IPEDS–CFPB data indicates that 1,798,756 title IV recipients with credit balances for the 2013–14 award year would be impacted by this proposed regulation. We estimate that each of the affected title IV recipients would take, on average, 20 minutes (.33 hours) to review the options presented by the institution or their third-party servicer and to make their selection.

Of the total number of title IV recipients with a credit balance, the data show that 1,736,141 recipients were enrolled in public institutions. On average, each recipient would take 20 minutes (.33 hours) to read the materials and make their selection, increasing burden by 572,927 hours (1,736,141 times .33 hours) under OMB Control Number 1845–0106.

Of the total number of title IV recipients with a credit balance, the data show that 13,601 recipients were enrolled in private not-for-profit institutions. On average each recipient would take 20 minutes (.33 hours) to read the materials and make their selection, increasing burden by 4,488 hours (13,601 recipients times .33 hours) under OMB Control Number 1845–0106.

Of the total number of title IV recipients with a credit balance, the data show that 49,014 recipients were enrolled in private for-profit institutions. On average each recipient would take 20 minutes (.33 hours) to read the materials and make their selection, increasing burden by 16,175 hours (49,014 recipients times .33 hours) under OMB Control Number 1845–0106.

Overall, burden to title IV recipients would increase by 593,590 hours (the sum of 572,927 hours, 4,488 hours, and 16,175 hours).

Requirements: T1 Arrangements

Under the proposed regulations in § 668.164(e), when an institution enters into a contract with a third-party servicer under which the servicer performs the functions of processing direct payments of title IV, HEA program funds on behalf of the institution to one or more financial accounts that are offered under the contract or by the third-party servicer, or by an entity contracting with or affiliated with the third party servicer to students and their parents, this would be considered a T1 arrangement between the institution and the third-party servicer.

Under a T1 arrangement the institution must comply with the following requirements:

1. The institution must obtain the student's or parent's consent to open the financial account before the institution provides any information about the student or parent, except for name, address, and email address, to the third-party servicer, the financial institution at which the financial account's funds would be deposited, or the agents of either an access device, or and before any representation of an access device, is sent to the student or parent; and before a card or tool provided to the student or parent for institutional purposes, such as a student ID card, is associated with the financial account;

2. The institution must inform the student or parent of the terms and conditions of the financial account, in a manner consistent with disclosure requirements specified by the Secretary in a notice published in the **Federal Register** following consultation with the CFPB, before the financial account is opened;

3. The institution must ensure that the student or parent has convenient access to the financial account through surcharge-free national or regional ATM network that has ATMs located on or near each location of the institution, and that those ATMs are sufficient in number and housed and serviced such that the funds are reasonably available from them, including at the times the institution or its third-party servicer makes direct payments into them. The institution must also ensure that students and parents do not incur any cost for opening the financial account or initially receiving an access device, assessed by the institution, third-party servicer, or associated financial institution on behalf of the third-party servicer, when the student or parent conducts point-of-sale transactions; or for conducting any transaction on an ATM that belongs to the regional or national network;

4. The institution must ensure that students and parents do not incur a charge initiated by the institution, third-party servicer, or associated financial institution on behalf of the third-party servicer for at least 30 days following the date that title IV, HEA program funds are deposited or transferred to the financial account;

5. The institution must ensure that the financial account or access device is not marketed or portrayed as, or converted into a credit card; that the financial account or access device is not marketed or portrayed as, or converted into a credit instrument, that no credit may be extended or associated with the account, and that any transaction exceeding the balance on the card must be denied without charging the student or parent any fee for such denial;

6. No later than 60 days after the most recently completed award year, the institution must provide to the Secretary and disclose conspicuously on the institution's Web site, the contract between the institution and financial institution in its entirety, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities; the total consideration, monetary and non-monetary, paid or received by the parties under the terms of the contract, as well as the number of students and parents who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders; and to annually provide a URL linking from the institution's Web site to the agreement and provide basic information about the agreement;

7. The institution must ensure that the terms of the T1 financial accounts are not inconsistent with the best financial interests of the students and parents opening them. The Secretary considers this requirement to be met if the institution documents that it periodically conducts reasonable due diligence reviews to ascertain whether the fees imposed under the T1 arrangement are, considered as a whole, excessive, in light of prevailing market rates; and all contracts for the marketing or offering of T1 accounts to the institution's students or parents provide for termination of the arrangement at the discretion of the institution based on complaints received from students or parents or a determination by the institution that the fees assessed under the T1 account are excessive;

8. The institution must take affirmative steps, by way of contractual arrangements with the third-party servicer as necessary, to ensure that these requirements are met with respect to all T1 financial accounts offered.

Burden Calculation: Based upon our examination of the 2013–14 NSLDS and IPEDS data that was further refined by examining the CFPB listing of 914 institutions known to have arrangements that would be considered either T1 and T2 arrangements under the proposed regulations, the data indicate that there were 541 public institutions with a T1 arrangement. We expect that these institutions would have to modify their systems or procedures to ensure compliance with these proposed regulations including, but not limited to, establish a consent process; provide account terms and conditions disclosures; ensure compliance with the 30-day prohibition for charges made to an account following the date that title IV, HEA program funds are deposited or transferred into the account; provide the proposed disclosures, contract disclosures, and use and cost data within 60 days after the end of the award year. In addition, it is likely that institutions would make other changes in order to conduct their proposed periodic due diligence and updating of third-party servicer contracts to allow for termination of the contract based upon student complaints or the institution's assessment that third-party servicer fees have become excessive. We estimate that the changes required by the proposed regulations would add an additional 55 hours of burden per institution, increasing burden by 29,755 hours (541 institutions times 55 hours per institution) under OMB Control Number 1845–0106.

Based upon our examination of the 2013–14 NSLDS and IPEDS data that was further refined by examining the CFPB listing of 914 institutions known to have arrangements that would be considered either T1 and T2 arrangements under the proposed regulations, the data indicate that there were 80 private not-for-profit institutions with a T1 arrangement. We expect that these institutions would have to modify their systems or procedures to ensure compliance with these proposed regulations. Specifically, we expect that modifications would be required including, but not limited to: The establishment of a consent process; provide account terms and conditions disclosures; ensure compliance with the 30-day prohibition on charges made to an account following the date that title IV, HEA program funds are deposited or transferred into the account; and provide the proposed disclosures, contract disclosures, and use and cost data within 60 days after the end of the award year. In addition, other modifications would likely be needed with regard to how the institutions plan to conduct their proposed periodic due diligence and updating of third-party servicer contracts to allow for termination of the contract based upon student complaints or the institution's assessment that third-party servicer fees have become excessive. We estimate that the changes required by the proposed regulations would add an additional 55 hours of burden per institution, increasing burden by 4,400 hours (80 institutions times 55 hours per institution) under OMB Control Number 1845–0106.

Based upon our examination of the 2013–14 NSLDS and IPEDS data that was further refined by examining the CFPB listing of 914 institutions known to have arrangements that would be considered either T1 and T2 arrangements under the proposed regulations, the data indicate that there were 75 private for-profit institutions with a T1 arrangement. We expect that institutions would have to modify their systems or procedures to ensure compliance with these proposed regulations. Specifically, we expect that modifications would be required including, but not limited to: The establishment of a consent process; provide account terms and condition disclosures; ensure compliance with the 30-day prohibition for charges made to an account following the date that title IV, HEA program funds are deposited or transferred into the account; and provide the proposed disclosures, contract disclosures, and use and cost data within 60 days after the end of the award year. In addition, it is likely that institutions would make other changes regarding how they will conduct their proposed periodic due diligence and updating of third-party contracts to allow for termination of the contract based upon student complaints or the institution's assessment that third-party fees have become excessive. We estimate that the changes required by the proposed regulations would add an additional 55 hours of burden per institution, increasing burden by 4,125 hours (75 institutions times 55 hours per institution) under OMB Control Number 1845–0106.

Overall, burden to title IV institutions would increase by 38,280 (the sum of 29,755 hours, 4,400 hours, and 4,125 hours).

The NSLDS–IPEDS–CFPB data showed that there were 1,538,667 title IV recipients at the with credit balances at institutions with a T1 arrangement in the 2013–14 award year. Of that number of recipients, the data showed that 1,476,144 were enrolled at public institutions. We estimate that, on average, each recipient would take 15 minutes (.25 hours) to read the about the major features and fees associated with the financial account, information about the monetary and non-monetary remuneration received by the institution for entering into the T1 arrangement, along with the number of students and parents who had financial accounts under the T1 arrangement for the most recent completed year, the mean and median costs incurred by account holders, and whether to provide their consent to the institution. Therefore, the additional burden on title IV recipients would increase by 369,036 hours (1,476,144 times .25 hours) under OMB Control Number 1845–0106.

The data showed that 13,509 title IV recipients with credit balances were enrolled at private not-for-profit institutions. We estimate that, on average, each recipient would take 15 minutes (.25 hours) to read the about the major features and fees associated with the financial account, information about the monetary and non-monetary remuneration received by the institution for entering into the T1 arrangement, along with the number of students and parents who had financial accounts under the T1 arrangement for the most recent completed year, the mean and median costs incurred by account holders, and whether to provide their consent to the institution. Therefore, the additional burden on title IV recipients would increase by 3,377 hours (13,509 times .25 hours) under OMB Control Number 1845–0106.

The data showed that 49,014 title IV recipients with credit balances were enrolled at private for-profit institutions. We estimate that, on average, each recipient would take 15 minutes (.25 hours) to read the about the major features and fees associated with the financial account, information about the monetary and non-monetary remuneration received by the institution for entering into the T1 arrangement, along with the number of students and parents who had financial accounts under the T1 arrangement for the most recent completed year, the mean and median costs incurred by account holders, and whether to provide their consent to the institution. Therefore, the additional burden on title IV recipients would increase by 12,254 hours under OMB Control Number 1845–0106.

Overall, burden to recipients would increase by 384,667 hours (the sum of

369,036 hours, 3,377 hours, and 12,254 hours).

Requirements: T2 Arrangements

Under the proposed regulations in § 668.164(f), when an institution enters into a contract with a financial institution under which financial accounts, into which title IV, HEA program funds will be transferred or deposited, are offered and marketed directly to students or their parents, the agreement would be considered a T2 arrangement. The Secretary considers that title IV, HEA program funds would be transferred or deposited into financial accounts that are offered under a contract between an institution and a financial institution if students or parents that receive credit balance funds are subject to the direct marketing. The Secretary considers that a financial account is marketed directly if the institution communicates information directly to its students or their parents about the financial account and how it may be opened; the financial account or access device is co-branded with the institution's name, logo, mascot, or other affiliation; or a card or tool that is provided to the student or parent for institutional purposes, such as a student ID card, is linked with the financial account or access device.

Under a T2 arrangement, the institution must comply with the following requirements:

1. The institution must obtain the student's or parent's consent to open the financial account before the institution provides, or permits a third-party servicer to provide, any information about the student or parent, except for name, address, and email address, to the financial institution or its agents; and before an institution provides any access device, or any representation of an access device, is sent to the student or parent; and before a card or tool provided to the student or parent for institutional purposes, such as a student ID card, is linked to the financial account;

2. The institution must inform the student or parent of the terms and conditions of the financial account, in a manner consistent with the disclosure requirements specified by the Secretary in a notice published in the **Federal Register** following consultation with the CFPB, before the financial account is opened if the institution includes the financial account in its student choice process under proposed paragraph (d);

3. No later than 60 days after the most recently completed award year, the institution must provide to the Secretary and disclose conspicuously on the institution's Web site the contract between the institution and financial institution in its entirety, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities; as well as, the total consideration, monetary and non-monetary, paid or received by the parties under the terms of the contract; and the number of students and parents who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders;

4. The institution must ensure that the funds deposited in the financial accounts are accessible through surcharge free in-network ATMs convenient to each of the institution's locations, and that those ATMs are sufficient in number and housed and serviced such that the funds are reasonably available from them, including at the times the institution or its third-party servicer makes direct payments into them;

5. The institution must ensure that the financial accounts are not marketed or portrayed as or converted into credit cards.

6. The institution must ensure that the terms of the T2 financial accounts are not inconsistent with the best financial interests of the students and parents opening them. The Secretary considers this requirement to be met if the institution documents that it periodically conducts reasonable due diligence reviews to ascertain whether the fees imposed under the T2 financial account are, considered as a whole, excessive, in light of prevailing market rates; and all contracts for the marketing or offering of T2 accounts to the institution's students or parents provide for termination of the arrangement at the discretion of the institution based on complaints received from students or parents or a determination by the institution under (B) that the fees assessed under the T2 account are excessive;

7. The institution must take affirmative steps, by way of contractual arrangements with the financial institution as necessary, to ensure that these requirements are met with respect to all T2 financial accounts offered.

Burden calculation: Based upon our examination of the 2013–14 NSLDS and IPEDS data on title IV recipients there were 7,539 institutions of higher education participating in title IV, HEA programs.

Of the total number of 7,539 institutions in the 2013–14 award year, the NSLDS–IPEDS–CFPB data showed that there would be 144 public institutions with T2 arrangements. Under these proposed regulations, we estimate that an institutions would have to modify its systems or procedures to ensure compliance with these proposed regulation regulations by, among other things, including, but not limited to, establish a consent process; provide account terms and conditions disclosures; ensure compliance with the 30-day prohibition for charges made to an account following the date that title IV, HEA program funds are deposited or transferred into the account; as well as provide the proposed disclosures, contract disclosures, and use and cost data within 60 days after the end of the award year. In addition, other changes regarding how the institution will to conduct its proposed periodic due diligence and updating of third-party servicer contracts to allow for termination of the contract based upon student complaints or the institution's assessment that third-party servicer fees have become excessive. We estimate that the changes required by the proposed regulations would add an additional 45 hours of burden per institution, increasing burden by 6,480 hours under OMB Control Number 1845–0106.

Of the total number of 7,539 institutions, the NSLDS–IPEDS–CFPB data showed that there would be 74 private not-for-profit institutions that had a T2 arrangement. We estimate that an institutions would have to modify its systems or procedures to ensure compliance with these proposed regulation including, but not limited to, establish a consent process; provide account terms and condition disclosures; ensure compliance with the 30-day prohibition for charges made to an account following the date that title IV, HEA program funds are deposited or transferred into the account; as well as provide the proposed disclosures, contract disclosures, and use and cost data within 60 days after the end of the award year. In addition, other changes regarding how the institution will conduct its proposed periodic due diligence and updating of third-party servicer contracts to allow for termination of the contract based upon student complaints or the institution's assessment that third-party servicer fees have become excessive. We estimate that the changes required by the proposed regulations would add an additional 45 hours of burden per institution, increasing burden by 3,330 hours under OMB Control Number 1845–0106.

Of the total number of 7,539 institutions, the NSLDS–IPEDS–CFPB

data showed that there would be 0 private for-profit institutions where title IV recipients had credit balances had a T2 arrangement.

Overall, burden to institutions would increase by 9,810 hours (the sum of 6,480 hours and 3,330 hours).

From the NSLDS–IPEDS–CFPB data, we projected that there were 260,089 title IV recipients with credit balances at institutions with T2 arrangements. Of that number of recipients, the data showed that 259,997 were enrolled at public institutions. We estimate that, on average, each recipient would take 15 minutes (.25 hours) to read the institution's consent information and decide whether to provide it or not. Therefore, the additional burden on title IV recipients would increase by 64,999 hours under OMB Control Number 1845–0106.

Of the total 260,089 title IV recipients with credit balances at institutions that had a T2 arrangement, we estimated that 92 were enrolled at private not-for-profit institutions. We estimate that, on average, each recipient would take 15 minutes (.25 hours) to read the institution's consent information and decide whether to provide it or not. Therefore, the additional burden on title IV recipients would increase by 23 hours under OMB Control Number 1845–0106.

Of the total 260,089 title IV recipients with credit balances at institutions with T2 arrangements, the data showed that zero were enrolled at private for-profit institutions.

Overall, burden to institutions would increase by 65,022 hours (the sum of 64,999 hours and 23 hours).

Collectively, the total increase in burden for § 668.164 would be 1,109,649 hours under OMB Control Number 1845–0106.

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions and borrowers, using wage data developed using BLS data, available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $19,431,272 as shown in the chart below. This cost was based on an hourly rate of $36.55 for institutions and $16.30 for students.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB control No. and estimated burden (change in burden)	Estimated costs
668.164–Disbursing Funds	The proposed regulations would require institutions to establish a account selection process if the institution prefers to send EFT payments to an account described in proposed §§ 668.164(e) and (f). Under proposed § 668.164(e), when an institution enters into a contract with a third-party servicer to make direct payments of title IV, HEA program funds as a T1 arrangement, the institution must meet certain requirements that include, but are not limited to, provide the terms and conditions of the financial accounts, provide convenient access to ATMs, cannot be converted to a credit instrument, must disclose the details of the contract with the public via the institution's Web site by providing a URL to a link showing the contract, including the mean and median costs incurred over the prior year as well as the number of students and parents with these financial accounts. Under proposed § 668.164(f), when an institution enters into a contract or marketing agreement with a financial institution under which title IV, HEA program funds would be transferred or deposited and are directly offered or marketed to students and their parents as a T2 arrangement, the institution must meet certain requirements that include but are not limited to, obtaining consent to open an financial account or access device that is co-branded with the institution's name, logo, mascot, or other affiliation, or a card or tool that is provided to the student or parent for institutional purposes such as a student ID card that is linked to the financial account, provide the terms and conditions of the account, disclose the contract between the institution and the financial institution.	OMB 1845–0106; This would be a revised collection. We estimate that the burden would increase by 1,109,649 hours.	$19,431,272

The total burden hours and change in burden hours associated with each OMB Control number affected by the proposed regulations follows:

Control number	Total proposed burden hours	Proposed change in burden hours
1845–0106	4,282,188	+ 3,599,340
Total	4,282,188	= 3,599,340

We have prepared an Information Collection Request (ICR) for these information collection requirements. If you want to review and comment on the ICR, please follow the instructions in the **ADDRESSES** section of this notice.

Note: The Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB), and the Department of Education review all comments posted at *www.regulations.gov.*

In preparing your comments, you may want to review the ICR in by using the

Docket ID number specified in this notice. This proposed collection is identified as proposed collection OMB 1845–0106.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Between 30 and 60 days after publication of this document in the **Federal Register**, OMB is required to make a decision concerning the collection of information contained in these proposed regulations. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by June 17, 2015. This does not affect the deadline for your comments to us on the proposed regulations.

If your comments relate to the ICR for these proposed regulations, please specify the Docket ID number and indicate ''Information Collection Comments'' on the top of your comments.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

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List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: May 13, 2015.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1091, and 1094, unless otherwise noted.

■ 2. Section 668.2 is amended by revising the definition of full-time student in paragraph (b) to read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Full-time student: An enrolled student who is carrying a full-time academic workload, as determined by the institution, under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student. For a term-based program, the student's workload may include repeating any coursework previously taken in the program but may not include more than one repetition of a previously passed course. However, for an undergraduate student, an institution's minimum standard must equal or exceed one of the following minimum requirements:

(1) For a program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), 12 semester hours or 12 quarter hours per academic term.

(2) For a program that measures progress in credit hours and does not use terms, 24 semester hours or 36 quarter hours over the weeks of instructional time in the academic year, or the prorated equivalent if the program is less than one academic year.

(3) For a program that measures progress in credit hours and uses nonstandard terms (terms other than semesters, trimesters or quarters) the number of credits determined by—

(i) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year; and

(ii) Multiplying the fraction determined under paragraph (3)(i) of this definition by the number of credit hours in the program's academic year.

(4) For a program that measures progress in clock hours, 24 clock hours per week.

(5) A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(7) For correspondence coursework, a full-time course load must be—

(i) Commensurate with the full-time definitions listed in paragraphs (1) through (6) of this definition; and

(ii) At least one-half of the coursework must be made up of non-correspondence coursework that meets one-half of the institution's requirement for full-time students.

■ 3. In § 668.8, paragraphs (k) and (l) are revised to read as follows:

§ 668.8 Eligible program.

* * * * *

(k) *Undergraduate educational program in credit hours.* If an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (l) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program for purposes of the title IV, HEA programs, unless—

(1) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(2) Each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary provided that—

(i) The institution's degree requires at least two academic years of study; and

(ii) The institution demonstrates that students enroll in, and graduate from, the degree program.

(l) *Formula.* (1) Except as provided in paragraph (l)(2) of this section, for purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and of determining the number of credit hours in that educational program with regard to the title IV, HEA programs—

(i) A semester hour must include at least 37.5 clock hours of instruction;

(ii) A trimester hour must include at least 37.5 clock hours of instruction; and

(iii) A quarter hour must include at least 25 clock hours of instruction.

(2) The institution's conversions to establish a minimum number of clock hours of instruction per credit may be less than those specified in paragraph (l)(1) of this section if the institution's designated accrediting agency, or recognized State agency for the approval of public postsecondary vocational institutions, for participation in the title IV, HEA programs has not identified any deficiencies with the institution's policies and procedures, or their implementation, for determining the credit hours that the institution awards for programs and courses, in accordance with 34 CFR 602.24(f), or, if applicable, 34 CFR 603.24(c), so long as—

(i) The institution's student work outside of class combined with the clock hours of instruction meet or exceed the numeric requirements in paragraph (l)(1) of this section; and

(ii)(A) A semester hour must include at least 30 clock hours of instruction;

(B) A trimester hour must include at least 30 clock hours of instruction; and

(C) A quarter hour must include at least 20 hours of instruction.

* * * * *

■ 4. Subpart K is revised to read as follows:

Subpart K—Cash Management

Sec.

§ 668.161 Scope and institutional responsibility.

(a) *General.* (1) This subpart establishes the rules under which a participating institution requests, maintains, disburses, and otherwise manages title IV, HEA program funds.

(2) As used in this subpart—

(i) *Access device* means a card, code, or other means of access to a financial account, or any combination thereof, that may be used by the student or parent to initiate electronic fund transfers.

(ii) *Day* means a calendar day, unless otherwise specified;

(iii) *Depository account* means an account at a depository institution described in 12 U.S.C. 461(b)(1)(A), or an account maintained by a foreign institution at a comparable depository institution that meets the requirements of § 668.163(a)(1);

(iv) *EFT (Electronic Funds Transfer)* means a transaction initiated electronically instructing the crediting or debiting of a financial account, or an institution's depository account. For purposes of transactions initiated by the Secretary, the term ''EFT'' includes all transactions covered by 31 CFR 208.2(f). For purposes of transactions initiated by or on behalf of an institution, the term ''EFT'' includes, from among the transactions covered by 31 CFR 208.2(f), only Automated Clearinghouse transactions;

(v) *Financial account* means a student's or parent's checking or savings account, prepaid card account, or other consumer asset account held directly or indirectly by a financial institution;

(vi) *Financial institution* means a bank, savings association, credit union, or any other person or entity that directly or indirectly holds a financial account belonging to a student or parent that issues an access device associated with a financial account and agrees with a student or parent to provide EFT services;

(vii) *Parent* means the parent borrower of a Direct PLUS Loan;

(viii) *Student ledger account* means a bookkeeping account maintained by an institution to record the financial transactions pertaining to a student's enrollment at the institution;

(ix) *Title IV, HEA programs* include the Federal Pell Grant, Iraq-Afghanistan Service Grant, TEACH Grant, FSEOG, Federal Perkins Loan, FWS, and Direct Loan programs, and any other program designated by the Secretary.

(b) *Federal interest in title IV, HEA program funds.* Except for funds provided by the Secretary for administrative expenses, and for funds used for the Job Location and Development Program under subpart B of the FWS regulations, funds received by an institution under the title IV, HEA programs are held in trust for the intended beneficiaries or the Secretary. The institution, as a trustee of those funds, may not use or hypothecate (*i.e.,* use as collateral) the funds for any other purpose or otherwise engage in any practice that risks the loss of those funds.

(c) *Standard of conduct.* An institution must exercise the level of care and diligence required of a fiduciary with regard to managing title IV, HEA program funds under this subpart.

§ 668.162 Requesting funds.

(a) *General.* The Secretary has sole discretion to determine the method under which the Secretary provides title IV, HEA program funds to an institution. In accordance with procedures established by the Secretary, the Secretary may provide funds to an institution under the advance payment method, reimbursement payment method, or cash monitoring payment method.

(b) *Advance payment method.* (1) Under the advance payment method, an institution submits a request for funds to the Secretary. The institution's request may not exceed the amount of funds the institution needs immediately for disbursements the institution has made or will make to eligible students and parents.

(2) If the Secretary accepts that request, the Secretary initiates an EFT of that amount to the depository account designated by the institution.

(3) The institution must disburse the funds requested as soon as administratively feasible but no later than three business days following the date the institution received those funds.

(c) *Reimbursement payment method.* (1) Under the reimbursement payment method, an institution must credit a student's ledger account for the amount of title IV, HEA program funds that the student or parent is eligible to receive, and pay the amount of any credit balance due under § 668.164(h), before the institution seeks reimbursement from the Secretary for those disbursements.

(2) An institution seeks reimbursement by submitting to the Secretary a request for funds that does not exceed the amount of the disbursements the institution made to students or parents included in that request.

(3) As part of its reimbursement request, the institution must—

(i) Identify the students or parents for whom reimbursement is sought; and

(ii) Submit to the Secretary, or an entity approved by the Secretary, documentation that shows that each student or parent included in the request was—

(A) Eligible to receive and has received the title IV, HEA program funds for which reimbursement is sought; and

(B) Paid directly any credit balance due under § 668.164(h).

(4) The Secretary will not approve the amount of the institution's reimbursement request for a student or parent and will not initiate an EFT of that amount to the depository account designated by the institution, if the Secretary determines with regard to that student or parent, and in the judgment of the Secretary, that the institution has not—

(i) Accurately determined the student's or parent's eligibility for title IV, HEA program funds;

(ii) Accurately determined the amount of title IV, HEA program funds disbursed, including the amount paid directly to the student or parent; and

(iii) Submitted the documentation required under paragraph (c)(3) of this section.

(d) *Heightened cash monitoring payment method.* Under the heightened cash monitoring payment method, an institution must credit a student's ledger account for the amount of title IV, HEA program funds that the student or parent is eligible to receive, and pay the amount of any credit balance due under § 668.164(h), before the institution—

(1) Submits a request for funds under the provisions of the advance payment method described in paragraph (b)(1) and (2) of this section, except that the institution's request may not exceed the amount of the disbursements the institution made to the students included in that request; or

(2) Seeks reimbursement for those disbursements under the provisions of the reimbursement payment method described in paragraph (c) of this section, except that the Secretary may modify the documentation requirements and review procedures used to approve the reimbursement request.

§ 668.163 Maintaining and accounting for funds.

(a)(1) *Institutional depository account.* An institution must maintain title IV, HEA program funds in a depository account. For an institution located in a State, the depository account must be insured by the FDIC or NCUA. For a foreign institution, the depository account may be insured by the FDIC or NCUA, or by an equivalent agency of the government of the country in which the institution is located. If there is no equivalent agency, the Secretary may approve a depository account designated by the foreign institution.

(2) For each depository account that includes title IV, HEA program funds, an institution must clearly identify that title IV, HEA program funds are maintained in that account by—

(i) Including in the name of each depository account the phrase ''Federal Funds''; or

(ii)(A) Notifying the depository institution that the depository account contains title IV, HEA program funds that are held in trust and retaining a record of that notice; and

(B) Except for a public institution located in a State or a foreign institution, filing with the appropriate State or municipal government entity a UCC–1 statement disclosing that the depository account contains Federal funds and maintaining a copy of that statement.

(b) *Separate depository account.* The Secretary may require an institution to maintain title IV, HEA program funds in a separate depository account that contains no other funds if the Secretary determines that the institution failed to comply with—

(1) The requirements in this subpart;

(2) The recordkeeping and reporting requirements in subpart B of this part; or

(3) Applicable program regulations.

(c) *Interest-bearing depository account.* (1) An institution is required to maintain its title IV, HEA program funds in an interest-bearing depository account, except as provided in 2 CFR 200.305(b)(8).

(2) Any interest earned on Federal Perkins Loan program funds is retained by the institution as provided under 34 CFR 674.8(a).

(3) An institution may keep the initial $500 in interest it earns during the award year on other title IV, HEA program funds it maintains in accordance with paragraph (c)(1) of this section. By June 30 of that award year, the institution must remit to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852 any interest over $500.

(d) *Accounting and fiscal records.* An institution must—

(1) Maintain accounting and internal control systems that identify the cash balance of the funds of each title IV, HEA program that are included in the institution's depository account or accounts as readily as if those funds were maintained in a separate depository account;

(2) Identify the earnings on title IV, HEA program funds maintained in the institution's depository account or accounts; and

(3) Maintain its fiscal records in accordance with the provisions in § 668.24.

§ 668.164 Disbursing funds.

(a) *Disbursement.* (1) Except as provided under paragraph (a)(2) of this section, a disbursement of title IV, HEA program funds occurs on the date that the institution credits the student's ledger account or pays the student or parent directly with—

(i) Funds received from the Secretary; or

(ii) Institutional funds used in advance of receiving title IV, HEA program funds.

(2)(i) For a Direct Loan for which the student is subject to the delayed disbursement requirements under 34 CFR 685.303(b)(4), if an institution credits a student's ledger account with institutional funds earlier than 30 days after the beginning of a payment period, the Secretary considers that the institution makes that disbursement on the 30th day after the beginning of the payment period; or

(ii) If an institution credits a student's ledger account with institutional funds earlier than 10 days before the first day of classes of a payment period, the Secretary considers that the institution makes that disbursement on the 10th day before the first day of classes of a payment period.

(b) *Disbursements by payment period.* (1) Except for paying a student under the FWS program or unless 34 CFR 685.303 applies, an institution must disburse during the current payment period the amount of title IV, HEA program funds that a student enrolled at the institution, or the student's parent, is eligible to receive for that payment period.

(2) An institution may make a prior year, late, or retroactive disbursement, as provided under paragraph (c)(3), (j), or (k) of this section, respectively, during the current payment period as long as the student was enrolled and eligible during the payment period

covered by that prior year, late, or retroactive disbursement.

(3) At the time that a disbursement is made for a payment period, the institution, along with the third-party servicer engaged by the institution to draw down title IV, HEA program funds or otherwise perform activities leading to or supporting that disbursement, must confirm that the student is enrolled at the institution, and that the student, or the student's parent, is eligible for that disbursement.

(c) *Crediting a student's ledger account.* (1) An institution may credit a student's ledger account with title IV, HEA program funds to pay for allowable charges associated with the current payment period. Allowable charges are—

(i) The amount of tuition, fees, and institutionally provided room and board assessed the student for the payment period or, as provided in paragraph (c)(5) of this section, the prorated amount of those charges if the institution debits the student's ledger account for more than the charges associated with the payment period; and

(ii) The amount incurred by the student for the payment period for purchasing books, supplies, and other educationally related goods and services provided by the institution for which the institution obtains the student's or parent's authorization under § 668.165(b).

(2) If an institution includes the cost of books and supplies as part of tuition and fees under paragraph (c)(1)(i) of this section, it must separately disclose those costs and explain why including them is in the best financial interests of students.

(3)(i) An institution may include in one payment period for the current year, prior year charges of not more than $200 for—

(A) Tuition, fees, and institutionally provided room and board, as provided under paragraph (c)(1)(i) of this section, without obtaining the student's or parent's authorization; and

(B) Educationally related goods and services provided by the institution, as described in paragraph (c)(1)(ii) of this section, if the institution obtains the student's or parent's authorization under § 668.165(b).

(ii) For purposes of this section—

(A) The current year is the current loan period for any student or parent who received a Direct Loan, or the current award year for any student who did not receive a Direct Loan; and

(B) A prior year is any loan period or award year prior to the current loan period or award year, as applicable.

(4) An institution may include in the current payment period allowable charges stemming from any previous payment period in the current award year or loan period for which the student was eligible, if the student was not already paid for such previous payment period.

(5) For purposes of this section, an institution determines the prorated amount of charges associated with the current payment period by—

(i) For a program with substantially equal payment periods, dividing the total institutional charges for the program by the number of payment periods in the program; or

(ii) For other programs, dividing the number of credit or clock hours the student enrolls in, or is expected to complete, in the current payment period, by the total number of credit or clock hours in the program and multiplying that result by the total institutional charges for the program.

(d)(1) *Direct payments.* Except as provided under paragraph (d)(3) of this section, an institution makes a direct payment—

(i) To a student, for the amount of the title IV, HEA program funds that a student is eligible to receive, including Direct PLUS Loan funds that the student's parent authorized the student to receive, by—

(A) Initiating an EFT of that amount to the student's financial account;

(B) Issuing a check for that amount payable to, and requiring the endorsement of, the student; or

(C) Dispensing cash for which the institution obtains a receipt signed by the student;

(ii) To a parent, for the amount of the Direct PLUS Loan funds that a parent does not authorize the student to receive, by—

(A) Initiating an EFT of that amount to the parent's financial account;

(B) Issuing a check for that amount payable to and requiring the endorsement of the parent; or

(C) Dispensing cash for which the institution obtains a receipt signed by the parent.

(2) *Issuing a check.* An institution issues a check on the date that it—

(i) Mails the check to the student or parent; or

(ii) Notifies the student or parent that the check is available for immediate pick-up at a specified location at the institution. The institution may hold the check for no longer than 21 days after the date it notifies the student or parent. If the student or parent does not pick up the check, the institution must immediately mail the check to the student or parent, pay the student or parent directly by other means, or return the funds to the appropriate title IV, HEA program.

(3) *Payments by the Secretary.* The Secretary may pay title IV, HEA credit balances under paragraphs (h) and (m) of this section directly to a student or parent using a method established or authorized by the Secretary and published in the **Federal Register**.

(4) *Student or parent choice.* (i) An institution that makes direct payments to a student or parent by EFT and that chooses to enter into an arrangement described in paragraph (e) or (f) of this section, including an institution that uses a third-party servicer to make those payments, must establish a selection process under which the student or parent chooses one of several options for receiving those payments.

(A) In implementing its selection process, the institution must—

(*1*) Inform the student or parent in writing that he or she is not required to open or obtain a financial account or access device offered by or through a specific financial institution;

(*2*) Ensure that the student's or parent's options for receiving direct payments are described and presented in a clear, fact-based, and, except as provided in paragraph (d)(4)(i)(B)(*1*) of this section, neutral manner;

(*3*) Ensure that initiating direct payments electronically to a financial account or access device associated with an existing student or parent financial account is as timely and no more onerous to the student or parent as initiating direct payments to an account described in paragraph (e) or (f) of this section; and

(*4*) Allow the student or parent the option to change, at any time, his or her choice as to how direct payments are made, as long as the student or parent provides the institution with written notice of the change within a reasonable time.

(B) In describing the options under its selection process, the institution—

(*1*) Must present prominently as the first and default option, the financial account or access device associated with an existing financial account belonging to the student or parent;

(*2*) Must list and identify the major features and commonly assessed fees associated with all financial accounts described in paragraphs (e) and (f) of this section, as well as a Universal Resource Locator (URL) for the terms and conditions of those accounts. For each account, if an institution follows the format and content requirements specified by the Secretary in a notice published in the **Federal Register** following consultation with the CFPB, it

will be in compliance with this requirement with respect to the major features and assessed fees associated with the account;

(*3*) May provide information about available financial accounts other than those described in paragraphs (e) and (f) of this section that have deposit insurance under 12 CFR part 330, or share insurance in accordance with 12 CFR part 745, for the benefit of the student or parent; and

(*4*) Must include issuing a check as an option for a student or parent to receive payments.

(ii) An institution that does not offer or use any financial accounts described in paragraphs (e) or (f) of this section may make direct payments to a student's or parent's existing financial account, or issue a check or disburse cash to the student or parent without establishing the selection process described in paragraph (d)(4)(i) of this section.

(e) *Tier one arrangement.* (1) In a Tier one (T1) arrangement, an institution has a contract with a third-party servicer under which the servicer performs one or more of the functions associated with processing direct payments of title IV, HEA program funds on behalf of the institution to one or more financial accounts that are offered under the contract or by the third-party servicer, or by an entity contracting with or affiliated with the third party servicer to students and their parents.

(2) Under a T1 arrangement, the institution must—

(i) Obtain the student's or parent's consent to open the financial account before—

(A) The institution provides any information about the student or parent, except for name, address, and email address, to the third-party servicer, to the financial institution at which the financial account's funds would be deposited, or the agents of either;

(B) An access device, or any representation of an access device, is sent to the student or parent; or

(C) A card or tool provided to the student or parent for institutional purposes, such as a student ID card, is linked to the financial account;

(ii) Inform the student or parent of the terms and conditions of the financial account, as required under § 668.164(d)(4)(i)(B)(*2*), before the financial account is opened;

(iii) Ensure that the student or parent—

(A) Has convenient access to the financial account through a surcharge-free national or regional ATM network that has ATMs located on or near each location of the institution, and that those ATMs are sufficient in number and housed and serviced such that the funds are reasonably available from them, including at the times the institution or its third-party servicer makes direct payments into the student or parent financial accounts;

(B) Does not incur any cost—

(*1*) For opening the financial account or initially receiving an access device;

(*2*) Assessed by the institution, third-party servicer, or third-party servicer's associated financial institution when the student or parent conducts point-of-sale transactions;

(*3*) For conducting any transaction on an ATM that belongs to the surcharge free regional or national network; and

(*4*) For a charge initiated by the institution, third-party servicer, or third-party servicer's associated financial institution for at least 30 days following the date that title IV, HEA program funds are deposited or transferred to the financial account;

(iv) Ensure that—

(A) The financial account or access device is not marketed or portrayed as or converted into a credit card; and

(B) No credit may be extended or associated with the financial account, and that no fee is charged to the student or parent for any transaction that exceeds the balance on the card, regardless of whether the full amount of the transaction is established at the time the transaction is authorized by the financial institution;

(v) No later than 60 days after the most recently completed award year disclose conspicuously on the institution's Web site—

(A) The contract(s) establishing the T1 arrangement between the institution and third-party servicer and financial institution acting on behalf of the third-party servicer, as applicable, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities;

(B) The total consideration for the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract; and

(C) The number of students and parents who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders;

(vi) Annually provide to the Secretary the URL for the items under paragraph (e)(2)(v) of this section for publication in a centralized database;

(vii) Ensure that the terms of the accounts offered pursuant to a T1 arrangement are not inconsistent with the best financial interests of the students and parents opening them. The Secretary considers this requirement to be met if—

(A) The institution documents that it periodically conducts reasonable due diligence reviews to ascertain whether the fees imposed under the T1 arrangement are, considered as a whole, not excessive in light of prevailing market rates; and

(B) All contracts for the marketing or offering of accounts pursuant to T1 arrangements to the institution's students or parents make provision for termination of the arrangement by the institution based on complaints received from students or parents or a determination by the institution under paragraph (e)(2)(vi)(A) of this section that the fees assessed under the T1 arrangement are excessive; and

(viii) Take affirmative steps, by way of contractual arrangements with the third-party servicer as necessary, to ensure that requirements of this section are met with respect to all accounts offered pursuant to T1 arrangements.

(f) *Tier two arrangement.* (1) In a Tier two (T2) arrangement, an institution has a contract with a financial institution or entity that offers financial accounts through a financial institution, under which financial accounts are offered and marketed directly to students or their parents.

(2) The Secretary presumes that title IV, HEA program funds are deposited or transferred into the financial accounts offered and marketed under paragraph (f)(1) of this section. However, the institution does not have to comply with the requirements described in paragraph (f)(4) of this section if it documents that, for the most recently completed award year no student or parent received a credit balance.

(3) The Secretary considers that a financial account is marketed directly if—

(i) The institution communicates information directly to its students or their parents about the financial account and how it may be opened;

(ii) The financial account or access device is co-branded with the institution's name, logo, mascot, or other affiliation; or

(iii) A card or tool that is provided to the student or parent for institutional purposes, such as a student ID card, is linked with the financial account or access device.

(4) Under a T2 arrangement, the institution must—

(i) Obtain the student's or parent's consent to open the financial account before—

(A) The institution provides, or permits a third-party servicer to provide, any information about the student or parent, except for name, address, and email address, to the financial institution or its agents;

(B) An access device, or any representation of an access device, is sent to the student or parent; or

(C) A card or tool provided to the student or parent for institutional purposes, such as a student ID card, is linked to the financial account;

(ii) Inform the student or parent of the terms and conditions of the financial account as required under § 668.164(d)(4)(i)(B)(*2*), before the financial account is opened;

(iii) No later than 60 days after the most recently completed award year, provide to the Secretary and disclose conspicuously on the institution's Web site—

(A) The contract(s) establishing the T2 arrangement between the institution and financial institution in its entirety, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities;

(B) The total consideration for the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract; and

(C) The number of students and parents who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders;

(iv) Annually provide to the Secretary the URL for the items under paragraph (f)(4)(iii) of this section for publication in a centralized database;

(v) Ensure that the funds deposited in the financial accounts are accessible through surcharge free in-network ATMs convenient to each of the institution's locations, and that those ATMs are sufficient in number and housed and serviced such that the funds are reasonably available from them, including at the times the institution or its third-party servicer makes direct payments into them; and

(vi) Ensure that the financial accounts are not marketed or portrayed as or converted into credit cards;

(vii) Ensure that the terms of the accounts offered pursuant to a T2 arrangement are not inconsistent with the best financial interests of the students and parents opening them. The Secretary considers this requirement to be met if—

(A) The institution documents that it periodically conducts reasonable due diligence reviews to ascertain whether the fees imposed under the T2 arrangement are, considered as a whole, not excessive in light of prevailing market rates; and

(B) All contracts for the marketing or offering of accounts pursuant to T2 arrangements to the institution's students or parents make provision for termination of the arrangement by the institution based on complaints received from students or parents or a determination by the institution under paragraph (f)(4)(vi)(A) of this section that the fees assessed under the T2 arrangement are excessive;

(viii) Take affirmative steps, by way of contractual arrangements with the financial institution as necessary, to ensure that requirements of this section are met with respect to all accounts offered pursuant to T2 arrangements; and

(ix) Ensure students and parents incur no cost for opening the account or initially receiving an access device.

(g) *Ownership of financial accounts opened through outreach to an institution's parents or students.* Any financial account offered pursuant to an arrangement described in paragraphs (e) or (f) of this section must meet the requirements of either 31 CFR 210.5(a) or (b)(5), as applicable.

(h) *Title IV, HEA credit balances.* (1) A title IV, HEA credit balance occurs whenever the amount of title IV, HEA program funds credited to a student's account for a payment period exceeds the amount assessed the student for allowable charges associated with that payment period as provided under paragraph (c) of this section.

(2) A title IV, HEA credit balance must be paid directly to the student or parent as soon as possible, but no later than—

(i) 14 days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or

(ii) 14 days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

(i) *Early disbursements.* (1) Except as provided in paragraph (i)(2) of this section for a first-year, first-time borrower or a student employed under the FWS program, the earliest an institution may disburse title IV, HEA funds to an eligible student or parent is—

(i) If the student is enrolled in a credit-hour program offered in terms that are substantially equal in length, 10 days before the first day of classes of a payment period; or

(ii) If the student is enrolled in a credit-hour program offered in terms that are not substantially equal in length, a non-term credit-hour program, or a clock-hour program, the later of—

(A) Ten days before the first day of classes of a payment period; or

(B) The date the student completed the previous payment period for which he or she received title IV, HEA program funds.

(2) An institution may not—

(i) Make an early disbursement of a Direct Loan to a first-year, first-time borrower who is subject to the 30-day delayed disbursement requirements in 34 CFR 685.303(b)(4). This restriction does not apply if the institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(4)(i)(A) or (B); or

(ii) Compensate a student employed under the FWS program until the student earns that compensation by performing work, as provided in 34 CFR 675.16(a)(5).

(j) *Late disbursements.* (1) *Ineligible student.* For purposes of this paragraph, an otherwise eligible student becomes ineligible to receive title IV, HEA program funds on the date that—

(i) For a Direct Loan, the student is no longer enrolled at the institution as at least a half-time student for the period of enrollment for which the loan was intended; or

(ii) For an award under the Federal Pell Grant, FSEOG, Federal Perkins Loan, Iraq-Afghanistan Service Grant, and TEACH Grant programs, the student is no longer enrolled at the institution for the award year.

(2) *Conditions for a late disbursement.* Except as limited under paragraph (i)(4) of this section, a student who becomes ineligible, as described in paragraph (i)(1) of this section, qualifies for a late disbursement (and the parent qualifies for a parent Direct PLUS Loan disbursement) if, before the date the student became ineligible—

(i) The Secretary processed a SAR or ISIR with an official expected family contribution for the student for the relevant award year; and

(ii)(A) For a loan made under the Direct Loan program or for an award made under the TEACH Grant program, the institution originated the loan or award; or

(B) For an award under the Federal Perkins Loan or FSEOG programs, the institution made that award to the student.

(3) *Making a late disbursement.* Provided that the conditions described

in paragraph (i)(2) of this section are satisfied—

(i) If the student withdrew from the institution during a payment period or period of enrollment, the institution must make any post-withdrawal disbursement required under § 668.22(a)(4) in accordance with the provisions of § 668.22(a)(5);

(ii) If the student completed the payment period or period of enrollment, the institution must provide the student or parent the choice to receive the amount of title IV, HEA program funds that the student or parent was eligible to receive while the student was enrolled at the institution. For a late disbursement in this circumstance, the institution may credit the student's ledger account as provided in paragraph (c) of this section, but must pay or offer any remaining amount to the student or parent; or

(iii) If the student did not withdraw but ceased to be enrolled as at least a half-time student, the institution may make the late disbursement of a loan under the Direct Loan program to pay for educational costs that the institution determines the student incurred for the period in which the student or parent was eligible.

(4) *Limitations.* (i) An institution may not make a late disbursement later than 180 days after the date the institution determines that the student withdrew, as provided in § 668.22, or for a student who did not withdraw, 180 days after the date the student otherwise became ineligible, pursuant to paragraph (i)(1) of this section.

(ii) An institution may not make a late second or subsequent disbursement of a loan under the Direct Loan program unless the student successfully completed the period of enrollment for which the loan was intended.

(iii) An institution may not make a late disbursement of a Direct Loan if the student was a first-year, first-time borrower as described in 34 CFR 685.303(b)(4) unless the student completed the first 30 days of his or her program of study. This limitation does not apply if the institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(4).

(iv) An institution may not make a late disbursement of any title IV, HEA program assistance unless it received a valid SAR or a valid ISIR for the student by the deadline date established by the Secretary in a notice published in the **Federal Register**.

(k) *Retroactive payments.* If an institution did not make a disbursement to an enrolled student for a payment period the student completed (for example, because of an administrative delay or because the student's ISIR was not available until a subsequent payment period), the institution may pay the student for all prior payment periods in the current award year or loan period for which the student was eligible.

(l) *Returning funds.* (1) Notwithstanding any State law (such as a law that allows funds to escheat to the State), an institution must return to the Secretary any title IV, HEA program funds, except FWS program funds, that it attempts to disburse directly to a student or parent that are not received by the student or parent. For FWS program funds, the institution is required to return only the Federal portion of the payroll disbursement.

(2) If an EFT to a student's or parent's financial account is rejected, or a check to a student or parent is returned, the institution may make additional attempts to disburse the funds, provided that those attempts are made not later than 45 days after the EFT was rejected or the check returned. In cases where the institution does not make another attempt, the funds must be returned to the Secretary before the end of this 45-day period.

(3) If a check sent to a student or parent is not returned but is not cashed, the institution must return the funds to the Secretary no later than 240 days after the date it issued the check.

(m) *Provisions for books and supplies.* (1) An institution must provide a way for a student who is eligible for title IV, HEA program funds to obtain or purchase, by the seventh day of a payment period, the books and supplies applicable to the payment period if, 10 days before the beginning of the payment period—

(i) The institution could disburse the title IV, HEA program funds for which the student is eligible; and

(ii) Presuming the funds were disbursed, the student would have a credit balance under paragraph (h) of this section.

(2) The amount the institution provides to the student to obtain or purchase books and supplies is the lesser of the presumed credit balance under this paragraph or the amount needed by the student, as determined by the institution.

(3) The institution must have a policy under which the student may opt out of the way the institution provides for the student to obtain or purchase books and supplies under this paragraph.

(4) If a student uses the method provided by the institution to obtain or purchase books and supplies under this paragraph, the student is considered to have authorized the use of title IV, HEA funds and the institution does not need to obtain a written authorization under paragraph (c) of this section and § 668.165(b) for this purpose.

§ 668.165 Notices and authorizations.

(a) *Notices.* (1) Before an institution disburses title IV, HEA program funds for any award year, the institution must notify a student of the amount of funds that the student or his or her parent can expect to receive under each title IV, HEA program, and how and when those funds will be disbursed. If those funds include Direct Loan program funds, the notice must indicate which funds are from subsidized loans and which are from unsubsidized loans.

(2) Except in the case of a post-withdrawal disbursement made in accordance with § 668.22(a)(5), if an institution credits a student's account at the institution with Direct Loan, Federal Perkins Loan, or TEACH Grant program funds, the institution must notify the student or parent of—

(i) The anticipated date and amount of the disbursement;

(ii) The student's or parent's right to cancel all or a portion of that loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement and have the loan proceeds and TEACH Grant proceeds returned to the Secretary; and

(iii) The procedures and time by which the student or parent must notify the institution that he or she wishes to cancel the loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement.

(3) The institution must provide the notice described in paragraph (a)(2) of this section in writing—

(i) No earlier than 30 days before, and no later than 30 days after, crediting the student's ledger account at the institution, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or

(ii) No earlier than 30 days before, and no later than seven days after, crediting the student's ledger account at the institution, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

(4)(i) A student or parent must inform the institution if he or she wishes to cancel all or a portion of a loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement.

(ii) The institution must return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, in accordance with program regulations provided that the institution receives a

loan or TEACH Grant cancellation request—

(A) By the later of the first day of a payment period or 14 days after the date it notifies the student or parent of his or her right to cancel all or a portion of a loan or TEACH Grant, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or

(B) Within 30 days of the date the institution notifies the student or parent of his or her right to cancel all or a portion of a loan, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

(iii) If a student or parent requests a loan cancellation after the period set forth in paragraph (a)(4)(ii) of this section, the institution may return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, in accordance with program regulations.

(5) An institution must inform the student or parent in writing regarding the outcome of any cancellation request.

(6) For purposes of this section—

(i) Affirmative confirmation is a process under which an institution obtains written confirmation of the types and amounts of title IV, HEA program loans that a student wants for the period of enrollment before the institution credits the student's account with those loan funds. The process under which the TEACH Grant program is administered is considered to be an affirmative confirmation process; and

(ii) An institution is not required to return any loan or TEACH Grant proceeds that it disbursed directly to a student or parent.

(b) *Student or parent authorizations.* (1) If an institution obtains written authorization from a student or parent, as applicable, the institution may—

(i) Use the student's or parent's title IV, HEA program funds to pay for charges described in § 668.164(c)(1)(ii) or (c)(3)(i)(B) that are included in that authorization; and

(ii) Unless the Secretary provides funds to the institution under the reimbursement payment method or the heightened cash monitoring payment method described in § 668.162(c)(2) or (d)(2), respectively, hold on behalf of the student or parent any title IV, HEA program, funds that would otherwise be paid directly to the student or parent as credit balance under § 668.164(h).

(2) In obtaining the student's or parent's authorization to perform an activity described in paragraph (b)(1) of this section, an institution—

(i) May not require or coerce the student or parent to provide that authorization;

(ii) Must allow the student or parent to cancel or modify that authorization at any time; and

(iii) Must clearly explain how it will carry out that activity.

(3) A student or parent may authorize an institution to carry out the activities described in paragraph (b)(1) of this section for the period during which the student is enrolled at the institution.

(4)(i) If a student or parent modifies an authorization, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student or parent cancels an authorization to use title IV, HEA program funds to pay for authorized charges under paragraph (a)(4) of this section, the institution may use title IV, HEA program funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student or parent cancels an authorization to hold title IV, HEA program funds under paragraph (b)(1)(ii) of this section, the institution must pay those funds directly to the student or parent as soon as possible but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess student funds under paragraph (b)(1)(ii) of this section, the institution must—(i) Identify the amount of funds the institution holds for each student or parent in a subsidiary ledger account designed for that purpose;

(ii) Maintain, at all times, cash in its depository account in an amount at least equal to the amount of funds the institution holds for the student; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balance on loan funds by the end of the loan period and any remaining other title IV, HEA program funds by the end of the last payment period in the award year for which they were awarded.

§ 668.166 Excess cash.

(a) *General.* The Secretary considers excess cash to be any amount of title IV, HEA program funds, other than Federal Perkins Loan program funds, that an institution does not disburse to students by the end of the third business day following the date the institution—

(1) Received those funds from the Secretary; or

(2) Deposited or transferred to its Federal account previously disbursed title IV, HEA program funds, such as those resulting from award adjustments, recoveries, or cancellations.

(b) *Excess cash tolerance.* An institution may maintain for up to seven days an amount of excess cash that does not exceed one percent of the total amount of funds the institution drew down in the prior award year. The institution must return immediately to the Secretary any amount of excess cash over the one-percent tolerance and any amount of excess cash remaining in its account after the seven-day tolerance period.

(c) *Consequences for maintaining excess cash.* Upon a finding that an institution maintained excess cash for any amount or time over that allowed in the tolerance provisions in paragraph (b) of this section, the actions the Secretary may take include, but are not limited to—

(1) Requiring the institution to reimburse the Secretary for the costs the Federal government incurred in providing that excess cash to the institution; and

(2) Providing funds to the institution under the reimbursement payment method or heightened cash monitoring payment method described in § 668.162(c) and (d), respectively.

§ 668.167 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the section or the application of its provisions to any person, act, or practice shall not be affected thereby.

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