



# FEDERAL REGISTER

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# Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1601

RIN 3046-AB03

#### Adjusting the Penalty for Violation of Notice Posting Requirements

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, this final rule adjusts for inflation the civil monetary penalty for violation of the notice-posting requirements in Title VII of the Civil Rights act of 1964, the Americans with Disabilities Act, and the Genetic Information Non-Discrimination Act.

**DATES:** This final rule is effective July 5, 2016.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Schlageter, Assistant Legal Counsel, (202) 663-4668, or Ashley M. Martin, General Attorney, (202) 663-4695, Office of Legal Counsel, 131 M St. NE., Washington, DC 20507. Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663-4191 (voice) or (202) 663-4494 (TTY), or to the Publications Information Center at 1-800-669-3362 (toll free).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Under section 711 of the Civil Rights Act of 1964 (Title VII), which is incorporated by reference in section 105 of the Americans with Disabilities Act (ADA) and section 207 of the Genetic Information Non-Discrimination Act (GINA), and 29 CFR 1601.30(a), every

employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program covered by Title VII, ADA, or GINA must post notices describing the pertinent provisions of Title VII, ADA, or GINA. Such notices must be posted in prominent and accessible places where notices to employees, applicants, and members are customarily maintained.

The EEOC first adjusted the civil monetary penalty for violations of the notice posting requirements in 1997 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIA Act), 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, Sec. 31001(s)(1), 110 Stat. 1373. A final rule was published in the **Federal Register** on May 16, 1997, at 62 FR 26934, which raised the maximum penalty per violation from \$100 to \$110. The EEOC's second adjustment, made pursuant to the FCPIA Act, as amended by the DCIA, was published in the **Federal Register** on March 19, 2014, at 79 FR 15220 and raised the maximum penalty per violation from \$110 to \$210.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Public Law 114-74, Sec. 701(b), 129 Stat. 599, further amended the FCPIA Act, to require each federal agency, not later than July 1, 2016, and not later than January 15 of every year thereafter, to issue regulations adjusting for inflation the maximum civil penalty that may be imposed pursuant to each agency's statutes. The purpose of the adjustment is to maintain the remedial impact of civil monetary penalties and promote compliance with the law. These periodic adjustments to the penalty are to be calculated pursuant to the inflation adjustment formula provided in section 5(b) of the 2015 Act and, in accordance with section 6 of the 2015 Act, the adjusted penalty will apply only to penalties assessed after the effective date of the adjustment.

Generally, the periodic inflation adjustment to a civil monetary penalty under the 2015 Act will be based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October preceding the date of adjustment and the prior year's October

CPI-U. The initial adjustment made to a civil monetary penalty under the 2015 Act, however, will be based on the percentage change between the CPI-U for the month of October 2015 and the CPI-U for the month of October of the calendar year during which the amount of such civil monetary penalty was established or last adjusted other than pursuant to the FCPIA Act. For the first adjustment made by an agency under the 2015 Act, the maximum amount of the increase in civil monetary penalty may not exceed 150 percent of the amount of that civil monetary penalty as it was on the date of enactment of 2015 Act.

##### II. Mathematical Calculation

The adjustment set forth in this final rule was calculated by comparing the CPI-U for October 2015 with the CPI-U for October 1964, the calendar year during which the amount of the civil monetary penalty was established, resulting in an inflation adjustment factor of 7.64752. Once the inflation adjustment factor is determined, the first step of the calculation is to multiply the inflation adjustment factor (7.64752) by the civil penalty amount (\$100) in the year that the penalty was established to calculate the inflation-adjusted penalty level (\$764.752). The second step is to round this inflation-adjusted penalty to the nearest dollar (\$765). The third step is to compare the new inflation-adjusted penalty amount (\$765) with the penalty amount (\$210) reported in the prior year's Agency Financial Report (AFR). Under the 2015 Act, the adjustment amount cannot exceed 150 percent of the last reported penalty (\$210). To achieve an increase of 150 percent, multiply the penalty amount (\$210) last reported in the AFR by 2.5, and round to the nearest dollar (\$525). The final step is to compare the inflation-adjusted penalty amount (\$765) with the penalty amount that is 150 percent more than the last reported penalty level (\$525). The 2015 Act specifies that if the inflation-adjusted penalty amount (\$765) is larger, the 150 percent limit applies, and the increase is limited to 150 percent. Accordingly, we are adjusting the maximum penalty per violation specified in 29 CFR 1601.30(a) from \$210 to \$525.



### III. Regulatory Procedures

#### *Administrative Procedure Act*

The Administrative Procedure Act (APA) provides an exception to the notice and comment procedures where an agency finds good cause for dispensing with such procedures, on the basis that they are impracticable, unnecessary, or contrary to the public interest. EEOC finds that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule because this adjustment of the civil monetary penalty is required by the 2015 Act, the formula for calculating the adjustment to the penalty is prescribed by statute, and the Commission has no discretion in determining the amount of the published adjustment. Accordingly, we are issuing this revised regulation as a final rule without notice and comment.

#### *Executive Order 13563 and 12866*

In promulgating this final rule, EEOC has adhered to the regulatory philosophy and applicable principles set forth in Executive Order 13563. Pursuant to Executive Order 12866, the EEOC has coordinated with the Office of Management and Budget (OMB). Under section 3(f) of Executive Order 12866, the EEOC and OMB have determined that this final rule will not have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The great majority of employers and entities covered by these regulations comply with the posting requirement, and, as a result, the aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who fail to post required notices in violation of the regulation and statute. The rule only increases the penalty by \$315 for each separate offense, nowhere near the \$100 million figure that would amount to a significant regulatory action.<sup>1</sup>

#### *Paperwork Reduction Act*

The Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. This final rule contains no new

information collection requirements, and therefore, will create no new paperwork burdens or modifications to existing burdens that are subject to review by the Office of Management and Budget under the PRA.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–612) only requires a regulatory flexibility analysis when notice and comment is required by the Administrative Procedure Act or some other statute. As stated above, notice and comment is not required for this rule. For that reason, the requirements of the Regulatory Flexibility Act do not apply.

#### *Unfunded Mandates Reform Act of 1995*

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Congressional Review Act*

The Congressional Review Act (CRA) requires 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. EEOC 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 the effective date of the rule. Under the CRA, 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 the CRA at 5 U.S.C. 804(2).

#### **List of Subjects in 29 CFR Part 1601**

Administrative practice and procedure.

For the Commission.

Dated: May 25, 2016.

**Jenny R. Yang,**  
*Chair.*

Accordingly, the Equal Employment Opportunity Commission amends 29 CFR part 1601 as follows:

#### **PART 1601—PROCEDURAL REGULATIONS**

■ 1. The authority citation for part 1601 continues to read as follows:

**Authority:** 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117; 42 U.S.C. 2000ff to 2000ff–11.

■ 2. Section 1601.30 is amended by revising paragraph (b) to read as follows:

#### **§ 1601.30 Notices to be posted.**

\* \* \* \* \*

(b) Section 711(b) of Title VII and the Federal Civil Penalties Inflation Adjustment Act, as amended, make failure to comply with this section punishable by a fine of not more than \$525 for each separate offense.

[FR Doc. 2016–12999 Filed 6–1–16; 8:45 am]

**BILLING CODE 6570–01–P**

### **POSTAL SERVICE**

#### **39 CFR Part 20**

#### **International Product Changes**

**AGENCY:** Postal Service.

**ACTION:** Final rule; correction.

**SUMMARY:** On April 22, 2016, the Postal Service published in the **Federal Register** a final rule concerning revisions to the *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM®), to reflect classification changes to Competitive Services. Due to subsequent circumstances, it has become necessary to reschedule the effective date of that final rule. This document establishes a new effective date.

**DATES:** The effective date for the rule published on April 22, 2016 (81 FR 23634), is delayed until August 28, 2016.

**FOR FURTHER INFORMATION CONTACT:** Paula Rabkin at 202–268–2537.

**SUPPLEMENTARY INFORMATION:** On April 22, 2016, the United States Postal Service® filed a final rule (81 FR 23634) revising the *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM), making classification changes to Competitive Services to support the shift of Priority Mail International® Flat Rate Envelopes and Small Flat Rate Priced Boxes from the letter-post stream to the air-parcel stream, with an effective date of June 3, 2016. Due to subsequent circumstances, the stated effective date will need to be changed. This document establishes a new effective date of August 28, 2016.

In rule FR Doc. 2016–09213 published on April 22, 2016 (81 FR 23634), the

<sup>1</sup> In the last ten years, the highest number of charges alleging notice posting violations occurred in 2010. In that year, only 114 charges of the 90,837 Title VII, ADA, and GINA charges (.13%) contained a notice posting violation.

effective date is delayed until August 28, 2016.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016-13080 Filed 6-1-16; 8:45 am]

BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2016-0014; FRL-9947-13-Region 8]

#### Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Revisions to Wyoming Air Quality Standards and Regulations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by the State of Wyoming on November 6, 2015. This submittal revises the Wyoming Air Quality Standards and Regulations (WAQSR) that pertain to the issuance of Wyoming air quality permits for major sources in nonattainment areas. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** This final rule is effective July 5, 2016.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2016-0014. 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, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests 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 a.m. to 4 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kevin Leone, Air Program, Mailcode SP AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver,

Colorado 80202-1129, (303) 312-6227, or [leone.kevin@epa.gov](mailto:leone.kevin@epa.gov).

#### I. Background

In this final rulemaking, we are taking action to approve the addition of Chapter 6, Section 13, Nonattainment permit requirements, and updated Section 14, Incorporation by reference, Wyoming Air Quality Standards and Regulations (WAQSR) to the Wyoming SIP. These provisions were submitted by the Wyoming Department of Environmental Quality (WDEQ) on November 6, 2015, to address certain CAA requirements related to ozone nonattainment areas.

On March 27, 2008, the EPA promulgated a revised National Ambient Air Quality Standard (NAAQS) for ozone with an 8-hour concentration limit of 0.075 parts per million (“8-Hour Ozone NAAQS”). Effective July 20, 2012, the EPA designated the Upper Green River Basin (UGRB) area of Wyoming as “nonattainment” for the 8-Hour Ozone NAAQS. For nonattainment areas, states are required to submit SIP revisions, including a nonattainment NSR permitting program for the construction and operation of new or modified major stationary sources located in the nonattainment area.

On May 10, 2011, before the formal designation of the UGRB area as nonattainment for the 8-Hour Ozone NAAQS, the WDEQ submitted a nonattainment new source review (NSR) permitting program SIP revision to EPA. This new section incorporated by reference 40 CFR 51.165 in its entirety, with the exception of paragraphs (a) and (a)(1), into Wyoming’s Chapter 6 Permitting Requirements. On February 20, 2015 (80 FR 9194), the EPA took final action to disapprove the portion of Wyoming’s May 10, 2011 submittal that added this new section to the permitting requirements in WAQSR Chapter 6. As explained in 80 FR 9194, the method Wyoming used to create a nonattainment NSR program was not consistent with the CAA and EPA regulations.

Our final disapproval started a two-year clock under CAA section 110(c)(1) for our obligation to promulgate a federal implementation plan (FIP) to correct the deficiency and the 18-month clock for sanctions, as required by CAA section 179(a)(2). These deadlines will be removed by the approval of this SIP revision addressing the deficiency in Wyoming’s nonattainment NSR permitting requirements. Under section 110(c)(1), the EPA must promulgate a FIP addressing the deficiencies unless the state corrects the deficiencies, and the EPA approves the plan or plan

revision, before the EPA promulgates the FIP. Under section 179(a), sanctions apply unless the deficiency has been corrected within 18 months. See also 40 CFR 52.31(d). With our approval of the November 6, 2015 submittal, we are affirmatively determining that the deficiencies identified in our February 20, 2015 notice have been corrected, and as a result the deadlines for a FIP and sanctions have been removed.

The SIP revisions submitted by the WDEQ on November 6, 2015, involve Chapter 6, Permitting Requirements, Section 13, Nonattainment new source review permit requirements, and Section 14, Incorporation by reference. The revisions to Section 13 establish specific nonattainment new source review permitting requirements. In Section 13, the WDEQ has incorporated federal regulatory language from 40 CFR 51.165 and reformatted it into state specific language that effectively imposes requirements on major sources in Wyoming. Additionally, the WDEQ has revised language within the rule to maintain consistency with the State’s Prevention of Significant Deterioration (PSD) regulations (WAQSR Chapter 6, Section 4). In addition to the revisions to Chapter 6, Section 13, the November 6, 2015, submittal also updates Chapter 6, Section 14, Incorporation by reference, to adopt by reference the CFR as published on July 1, 2014. The State previously submitted SIP revisions for Chapter 6, Section 14 on May 28, 2015 that requested adoption by reference of the CFR as published on July 1, 2013.

#### II. What are the changes that EPA is taking final action to approve?

In our March 1, 2016 proposed action (81 FR 10559), we proposed to approve the following revisions to the WASQR: Chapter 6, Section 13, Nonattainment permit requirements, and updated Section 14, Incorporation by reference, WAQSR to the Wyoming SIP. As explained in 81 FR 10559, these changes are consistent with CAA and EPA regulations and address the deficiencies identified in our February 20, 2015 disapproval.

Instead of incorporating 40 CFR 51.165 by reference, the November 6, 2015 submittal adapts the language in 40 CFR 51.165 to remove phrases such as “the plan shall provide” and “the plan may provide,” and specifies the procedures to be used. In addition, the submittal revises language in 40 CFR 51.165 to specify that the WDEQ is the reviewing authority. In one place, the submittal modifies the term “building, structure, facility, or installation” to “structure, building, facility, equipment, installation, or operation,” without

modifying the substance of the definition of the term, which is permissible. These changes are consistent with the CAA and EPA regulations. Specifically:

1. CAA section 110(a)(2)(C), requires each state plan to include “a program to provide for . . . the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that the [NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter.”

2. CAA section 172(c)(5), provides that the plan “shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section [173].” By removing language such as “the plan shall provide,” the submittal avoids any ambiguity as to whether permits are required.

3. CAA section 173, lays out the requirements for obtaining a permit that must be included in a state’s SIP-approved permit program. Wyoming’s Chapter 6, Section 13 rules impose these requirements on sources, and the State’s proposed plan clearly satisfies the requirements of these statutory provisions.

4. CAA section 110(a)(2)(A), requires that SIPs contain enforceable emissions limitations and other control measures. Under section CAA section 110(a)(2), the enforceability requirement in section 110(a)(2)(A) applies to all plans submitted by a state. Chapter 6, Section 13 creates enforceable obligations for sources by removing phrases such as “the plan shall provide” and “the plan may provide.”

5. CAA section 110(i), (with certain limited exceptions) prohibits states from modifying SIP requirements for stationary sources except through the SIP revision process. By eliminating unspecified procedures that were referenced in the May 10, 2011 submittal, the November 6, 2015 submittal addresses this issue.

6. CAA section 172(c)(7), requires that nonattainment plans, including nonattainment NSR programs required by section 172(c)(5), meet the applicable provisions of section 110(a)(2), including the requirement in section 110(a)(2)(A) for enforceable emission limitations and other control measures.

7. CAA section 110(1), provides that EPA cannot approve a SIP revision that interferes with any applicable requirement of the Act. As described above, the addition of Chapter 6, Section 13 to the Wyoming SIP would not interfere with sections 110(a)(2) and 110(i) of the Act.

8. Wyoming’s SIP revision complies with the requirements of 40 CFR 51.165 as the plan imposes the regulatory requirements on individual sources, as required by the regulatory provisions. The crosswalk table in the docket details how the submittal addresses specific requirements in 40 CFR 51.165.

Wyoming’s submittal also addresses the potential conflicts with the State’s approved minor NSR and PSD programs that existed in the May 5, 2011 submittal. First, Section 13(c)(i) provides that the exemptions in the minor NSR program (Section 2(k)) shall not apply with regards to applicability of the nonattainment NSR program. Second, Section 13(d)(iv) states that lowest achievable emissions rate (LAER), not best available control technology (BACT), applies to sources subject to nonattainment NSR. Finally, Section 13(f)(iii) clarifies that Section 13 does not apply in the Sheridan PM<sub>10</sub> nonattainment area; instead the construction ban in Section 2(c)(ii)(B) continues to apply. We also note that Wyoming will have permitting authority for new major sources and major modifications in the Sheridan coarse particulate matter (PM<sub>10</sub>) nonattainment area, if Wyoming submits and we approve the removal of the construction ban from the SIP. Wyoming has had a construction ban in place and approved into the SIP for over 20 years (See WAQSR, Chapter 6, Section 2(c)(ii)(B)).

EPA’s final approval of Wyoming’s nonattainment permitting program allows Wyoming to apply WAQSR Chapter 6, Section 13 as permitting authority in the UGRB ozone nonattainment area for new major sources and major modifications of nitrogen oxide (NO<sub>x</sub>) and volatile organic compounds (VOCs) as ozone precursors.

Finally, as explained in our proposal notice, the November 6, 2015 submittal treats sulfur dioxide (SO<sub>2</sub>) as a precursor to PM<sub>2.5</sub>, and presumes that NO<sub>x</sub> is also a precursor to PM<sub>2.5</sub>. The State of Wyoming has no nonattainment areas for the PM<sub>2.5</sub> standards. Accordingly, the EPA finds it reasonable to conclude that major sources of VOCs and ammonia do not contribute significantly to PM<sub>2.5</sub> nonattainment within the State. Thus, there is no need at this time for the State to regulate VOCs or ammonia as PM<sub>2.5</sub> precursors in the State’s nonattainment NSR permitting program, and so we are approving the submittal’s PM<sub>2.5</sub> precursor provisions. Should the EPA in the future designate an area in Wyoming as nonattainment for PM<sub>2.5</sub>, the State would have the obligation to ensure that the nonattainment NSR program met all

applicable requirements for PM<sub>2.5</sub>, including appropriate control of precursors. See CAA sections 172(c)(5) and 189(a)(1)(A).

We provided a detailed explanation of the basis of approval in our proposed rulemaking (see 79 FR 65362). We invited comment on all aspects of our proposal and provided a 30-day comment period. The comment period ended on March 31, 2016.

### III. Response to Comments

We received one comment letter during the public comment period. The comment letter was submitted by Nancy E. Vehr, Air Quality Division (AQD) Administrator for the State of Wyoming.

*Comment:* The comment expresses the AQD’s support for the EPA’s proposed approval of the addition of Chapter 6, Section 13, Nonattainment permit requirements, and updated Section 14, Incorporation by reference, WAQSR to the Wyoming SIP.

*Response:* We have received the comment and acknowledge the support.

### IV. What action is EPA taking today?

The EPA is taking final action to fully approve Wyoming’s November 6, 2015, submittal. As discussed in our proposal and this notice, our action is based on an evaluation of Wyoming’s rules against the requirements of CAA sections 110(a)(2)(C), 110(a)(2)(A), 110(i), 110(1), 172(c)(5), 172(c)(7), 173, and regulations at 40 CFR 51.165.

As described in our proposed rulemaking, and in Section II of this notice, the EPA is approving the addition of Chapter 6, Section 13, Nonattainment new source review permit requirements, and updated Section 14, Incorporation by reference, WAQSR to the Wyoming SIP submitted by Wyoming on November 6, 2015. We are also determining that the November 6, 2015 submittal addresses the deficiencies identified by the EPA in Wyoming’s prior submittal of Section 13; as a result the deadlines for a FIP and sanctions are removed.

### V. 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 WDEQ rules as described in the amendments to 40 CFR part 52 set forth in this document. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office

(see the **ADDRESSES** section of this preamble for more information).

**VI. Statutory and Executive Orders Review**

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact in 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 Clean Air Act; 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).

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. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the 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 August 1, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 11, 2016.

**Shaun L. McGrath,**  
*Regional Administrator, Region 8.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart ZZ—Wyoming**

■ 2. In § 52.2620, in the table in paragraph (c), under "Chapter 06. Permitting Requirements," add an entry for "Section 13" and revise the entry for "Section 14" to read as follows:

**§ 52.2620 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

Rule No.	Rule title	State effective	EPA effective date	Final rule citation/date	Comments
<b>Chapter 06. Permitting Requirements</b>					
* * * * *					
Section 13	Nonattainment new source review permit requirements.	10/13/2015	7/5/2016	6/2/2016 [insert <b>Federal Register</b> citation].	
Section 14	Incorporation by reference	10/13/2015	7/5/2016	6/2/2016 [insert <b>Federal Register</b> citation].	
* * * * *					

[FR Doc. 2016-12725 Filed 6-1-16; 8:45 am]

BILLING CODE 6560-50-P

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**FEDERAL COMMUNICATIONS  
COMMISSION**

**47 CFR Part 12**

[PS Docket No. 14-174, FCC 15-98]

**Ensuring Continuity of 911  
Communications**

**AGENCY:** Federal Communications  
Commission.

**ACTION:** Final rule; correction of  
announcement of compliance date.

**SUMMARY:** The Federal Communications  
Commission published in the **Federal  
Register** of April 7, 2016, an  
announcement that the Office of  
Management and Budget (OMB) has

approved, for a period of three years, the  
information collection associated with  
the Commission's Ensuring Continuity  
of 911 Communications Report and  
Order's (*Order*) consumer disclosure  
requirement. We inadvertently  
announced the wrong compliance date  
for providers with fewer than 100,000  
domestic retail subscriber lines as April  
1, 2017. This document changes the  
date to February 1, 2017.

**DATES:** Effective June 2, 2016 the  
compliance date for the rule published  
April 7, 2016 (81 FR 20258) is corrected  
from April 1, 2017 to February 1, 2017.

**FOR FURTHER INFORMATION CONTACT:**  
Linda M. Pinto, Policy and Licensing  
Division, Public Safety and Homeland  
Security Bureau, at (202) 418-7490, or  
email: [linda.pintro@fcc.gov](mailto:linda.pintro@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The FCC  
published a document in the **Federal  
Register** of April 7, 2016, (81 FR 20258)

announcing that, on March 21, 2016,  
OMB approved, for a period of three  
years, the information collection  
requirements relating to the subscriber  
notification rules contained in the  
Commission's *Order*, FCC 15-98,  
published at 80 FR 62470, October 16,  
2015. The OMB Control Number is  
3060-1217. The Commission published  
this document as an announcement of  
the effective date of the rules. This  
document inadvertently announced the  
compliance date for providers with  
fewer than 100,000 domestic retail  
subscriber lines as April 1, 2017. This  
correction replaces this compliance date  
with February 1, 2017.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2016-12946 Filed 6-1-16; 8:45 am]

BILLING CODE 6712-01-P

# Proposed Rules

Federal Register

Vol. 81, No. 106

Thursday, June 2, 2016

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 THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG–135734–14]

RIN 1545–BM45

#### Inversions and Related Transactions; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to a notice of proposed rulemaking by cross-reference to temporary regulation.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking by cross-reference to temporary regulations (REG–135734–14) that were published in the **Federal Register** on Friday, April 8, 2016 (81 FR 20588). The proposed regulations relate to transactions that are structured to avoid the purposes of sections 7874 and 367 of the Internal Revenue Code (the Code) and certain post-inversion tax avoidance transactions.

**DATES:** Written or electronic comments and requests for a public hearing for the notice of proposed rulemaking published at 81 FR 20588, April 8, 2016 are still being accepted and must be received by July 7, 2016.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations under sections 304, 367, and 7874, Shane M. McCarrick or David A. Levine, (202) 317–6937; concerning the proposed regulations under sections 956 and 770 (l), Rose E. Jenkins (202) 317–6934; concerning submissions or comments or requests for a public hearing, Regina Johnson 202–317–6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

The notice of proposed rulemaking by cross-reference to temporary regulations (REG–135734–14) that is the subject of this correction is under sections 304,

367, 956, 7701(l), and 7874 of the Internal Revenue Code.

#### Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–135734–14) contains errors that may prove to be misleading and are in need of clarification.

#### Correction of Publication

Accordingly, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–135734–14) that was the subject of FR Doc. 2016–07299 is corrected as follows:

■ 1. On page 20588, in the preamble, in the “Background” paragraph, in the fifth line, the language “954, 956, 7701(l), and 7874 of the” is corrected to read “956, 7701(l), and 7874 of the”.

#### § 1.7874–4 [Corrected]

■ 2. On page 20590, second column, seventh line of paragraph (c)(1)(ii), the language “(ii) [Reserved].” is corrected to read “(ii) introductory text through (ii)(A) [Reserved].”.

■ 3. On page 20590, second column, second line of paragraph (i)(7), the language “(i)(7)(iii) introductory text [Reserved].” is corrected to read “(i)(7)(iii)(B) [Reserved].”.

■ 4. On page 20590, third column, first and second line of paragraph (j), the language “(j) introductory text through (j)(6) [Reserved].” is corrected to read “(i)(8) through (j)(6) [Reserved].”.

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2016–13015 Filed 6–1–16; 8:45 am]

**BILLING CODE 4830–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

[EPA–HQ–TRI–2015–0607; FRL–9943–55]

RIN 2025–AA42

#### Addition of Hexabromocyclododecane (HBCD) Category; Community Right-to-Know Toxic Chemical Release Reporting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to add a hexabromocyclododecane (HBCD) category to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). EPA is proposing to add this chemical category to the EPCRA section 313 list because EPA believes HBCD meets the EPCRA section 313(d)(2)(B) and (C) toxicity criteria. Specifically, EPA believes that HBCD can reasonably be anticipated to cause developmental and reproductive effects in humans and is highly toxic to aquatic and terrestrial organisms. In addition, based on the available bioaccumulation and persistence data, EPA believes that HBCD should be classified as a persistent, bioaccumulative, and toxic (PBT) chemical and assigned a 100-pound reporting threshold. Based on a review of the available production and use information, members of the HBCD category are expected to be manufactured, processed, or otherwise used in quantities that would exceed a 100-pound EPCRA section 313 reporting threshold.

**DATES:** Comments must be received on or before August 1, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–TRI–2015–0607, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/where-send-comments-epa-dockets#hq>.

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

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Daniel R. Bushman, Toxics Release Inventory Program Division (7409M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (202) 566-0743; email: [bushman.daniel@epa.gov](mailto:bushman.daniel@epa.gov).

*For general information contact:* The Emergency Planning and Community Right-to-Know Hotline; telephone numbers: toll free at (800) 424-9346 (select menu option 3) or (703) 412-9810 in Virginia and Alaska; or toll free, TDD (800) 553-7672; or go to <http://www.epa.gov/superfund/contacts/infocenter/>.

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this notice apply to me?*

You may be potentially affected by this action if you manufacture, process, or otherwise use HBCD. 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:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311\*, 312\*, 313\*, 314\*, 315\*, 316, 321, 322, 323\*, 324, 325\*, 326\*, 327, 331, 332, 333, 334\*, 335\*, 336, 337\*, 339\*, 111998\*, 211112\*, 212324\*, 212325\*, 212393\*, 212399\*, 488390\*, 511110, 511120, 511130, 511140\*, 511191, 511199, 512220, 512230\*, 519130\*, 541712\*, or 811490\*.

\* Exceptions and/or limitations exist for these NAICS codes.

- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (corresponds to SIC code 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (corresponds to SIC code 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221118, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC code 5171, Petroleum Bulk

Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems).

- Federal facilities.

To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What action is the Agency taking?*

EPA is proposing to add a hexabromocyclododecane (HBCD) category to the list of toxic chemicals subject to reporting under EPCRA section 313 and PPA section 6607. As discussed in more detail later in this document, EPA is proposing to add this chemical category to the EPCRA section 313 list because EPA believes HBCD meets the EPCRA section 313(d)(2)(B) and (C) toxicity criteria.

*C. What is the Agency's authority for taking this action?*

This action is issued under EPCRA sections 313(d) and 328, 42 U.S.C. 11023 *et seq.*, and PPA section 6607, 42 U.S.C. 13106. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Congress established an initial list of toxic chemicals that comprised 308 individually listed chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in EPCRA section 313(d)(2) are met. Therefore, to add a chemical, EPA must demonstrate that at

least one criterion is met, but need not determine whether any other criterion is met. Conversely, to remove a chemical from the list, EPCRA section 313(d)(3) dictates that EPA must demonstrate that none of the following listing criteria in EPCRA section 313(d)(2)(A)–(C) are met:

- The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

- The chemical is known to cause or can reasonably be anticipated to cause in humans: Cancer or teratogenic effects, or serious or irreversible reproductive dysfunctions, neurological disorders, heritable genetic mutations, or other chronic health effects.

- The chemical is known to cause or can be reasonably anticipated to cause, because of its toxicity, its toxicity and persistence in the environment, or its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the EPCRA section 313(d)(2)(A) criterion as the “acute human health effects criterion;” the EPCRA section 313(d)(2)(B) criterion as the “chronic human health effects criterion;” and the EPCRA section 313(d)(2)(C) criterion as the “environmental effects criterion.”

EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432) (FRL-4922-2), a statement clarifying its interpretation of the EPCRA section 313(d)(2) and (d)(3) criteria for modifying the EPCRA section 313 list of toxic chemicals.

**II. Background Information***A. What is HBCD?*

HBCD is a cyclic aliphatic hydrocarbon consisting of a 12-membered carbon ring with 6 bromine atoms attached (molecular formula C<sub>12</sub>H<sub>18</sub>Br<sub>6</sub>). HBCD has 16 possible stereoisomers. Technical grades of HBCD consist predominantly of three diastereomers,  $\alpha$ -,  $\beta$ - and  $\gamma$ -HBCD (Ref. 1). HBCD may be designated as a non-specific mixture of all isomers (hexabromocyclododecane, Chemical Abstracts Service Registry Number (CASRN) 25637-99-4) or as a mixture of the three main diastereomers (1,2,5,6,9,10-hexabromocyclododecane, CASRN 3194-55-6) (Ref 1). The main use of HBCD is as a flame retardant in expanded polystyrene foam (EPS) and

extruded polystyrene foam (XPS) (Ref. 2). EPS and XPS are used primarily for thermal insulation boards in the building and construction industry. HBCD may also be used as a flame retardant in textiles including: upholstered furniture, upholstery seating in transportation vehicles, draperies, wall coverings, mattress ticking, and interior textiles, such as roller blinds (Ref. 2). In addition, HBCD is used as a flame retardant in high-impact polystyrene for electrical and electronic appliances such as audio-visual equipment, as well as for some wire and cable applications (Ref. 2).

Concerns for releases and uses of HBCD have been raised because it is found world-wide in the environment and wildlife and has also been found in human breast milk, adipose tissue and blood (Ref. 1). HBCD is known to bioaccumulate and biomagnify in the food chain and has been detected over large areas and in remote locations in environmental monitoring studies (Ref. 1).

#### *B. How is EPA proposing to list HBCD under EPCRA section 313?*

HBCD is identified through two primary CASRNs 3194–55–6 (1,2,5,6,9,10-hexabromocyclododecane) and 25637–99–4

(hexabromocyclododecane) (Ref. 1). EPA is proposing to create an HBCD category that would cover these two chemical names and CASRNs. The HBCD category would be defined as: Hexabromocyclododecane and would only include those chemicals covered by the following CAS numbers:

- 3194–55–6; 1,2,5,6,9,10-Hexabromocyclododecane.
- 25637–99–4;

Hexabromocyclododecane.

As a category, facilities that manufacture, process or otherwise use HBCD covered under both of these names and CASRNs would file just one report.

In addition to listing HBCD as a category, EPA is proposing to add the HBCD category to the list of chemicals of special concern. There are several chemicals and chemical categories on the EPCRA section 313 chemical list that have been classified as chemicals of special concern because they are PBT chemicals (see 40 CFR 372.28(a)(2)). In a final rule published in the **Federal Register** of October 29, 1999 (64 FR 58666) (FRL–6389–11), EPA established the PBT classification criteria for chemicals on the EPCRA section 313 chemical list. For purposes of EPCRA section 313 reporting, EPA established persistence half-life criteria for PBT chemicals of 2 months in water/

sediment and soil and 2 days in air, and established bioaccumulation criteria for PBT chemicals as a bioconcentration factor (BCF) or bioaccumulation factor (BAF) of 1,000 or higher. Chemicals meeting the PBT criteria were assigned 100-pound reporting thresholds. With regards to setting the EPCRA section 313 reporting thresholds, EPA set lower reporting thresholds (10 pounds) for those PBT chemicals with persistence half-lives of 6 months or more in water/sediment or soil and with BCF or BAF values of 5,000 or higher, these chemicals were considered highly PBT chemicals. The data presented in this proposed rule support classifying the HBCD category as a PBT chemical category with a 100-pound reporting threshold.

### **III. What is EPA's evaluation of the toxicity, bioaccumulation, and environmental persistence of HBCD?**

EPA evaluated the available literature on the human health toxicity, ecological toxicity, bioaccumulation potential, and environmental persistence of HBCD (Ref. 1). Unit III.A. provides a review of the human health toxicity studies and EPA's conclusions regarding the human health hazard potential of HBCD. Unit III.B. discusses the ecological toxicity of HBCD, Unit III.C. contains information on the bioaccumulation potential of HBCD, and Unit III.D. provides information on the environmental persistence of HBCD.

#### *A. What is EPA's review of the human health toxicity data for HBCD?*

1. *Toxicokinetics.* HBCD is absorbed via the gastrointestinal tract and metabolized in rodents (Refs. 3, 4, 5, and 6). Once absorbed, HBCD is distributed to a number of tissues, including fatty tissue, muscle, and the liver (Refs. 7, 8, 9, 10, 11, and 12). Elimination of HBCD is predominantly via feces (as the parent compound), but it is also eliminated in urine (as secondary metabolites) (Refs. 3, 4, and 5). HBCD has been detected in human milk, adipose tissue, and blood (Refs. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24). The composition of HBCD isomers in most rodent toxicity studies resembles that of industrial grade HBCD, which may differ from human exposure to certain foods that have been shown to contain elevated fractions of  $\alpha$ -HBCD (Ref. 25).

2. *Effects of acute exposure.* HBCD was not found to be highly toxic in acute oral, inhalation, and dermal studies in rodents. One study reported an oral median lethal dose (LD<sub>50</sub>) of >10,000 milligrams per kilogram (mg/kg) in Charles River rats (Ref. 26).

Another study by the same researchers, however, reported an LD<sub>50</sub> of 680 mg/kg for females and 1,258 mg/kg for males in Charles River CD rats (Ref. 27). Two other studies reported an oral LD<sub>50</sub> of >5,000 mg/kg in Sprague-Dawley rats and >10,000 mg/kg in NR rats (Refs. 28 and 29). An oral study in NR mice reported an LD<sub>50</sub> of >6,400 mg/kg (Ref. 30). Acute inhalation studies in rats have generally concluded that HBCD is not highly toxic, with a median lethal concentration (LC<sub>50</sub>) reported by Gulf South Research Institute of >200 milligrams per liter (mg/L) (Refs. 26, 27, 29, 31). Acute dermal toxicity studies have generally shown HBCD not to be highly toxic in rabbits (Refs. 27, 29, 31, and 32). One dermal study reported an LD<sub>50</sub> of 3,969 mg/kg (Ref. 27).

Additionally, HBCD is not a dermal irritant in rabbits (Refs. 27, 29, and 31), but it is a mild skin allergen in guinea pigs (Ref. 32). Acute eye irritation studies have concluded that HBCD is a primary eye irritant (Ref. 27) and a mild, transient ocular irritant (Ref. 29).

3. *Effects of short-term and subchronic exposure.* In subacute and subchronic studies, HBCD demonstrated effects on the thyroid and liver (Refs. 8, 33, 34, and 35). In a subacute study, van der Ven *et al.* (Ref. 8) exposed Wistar rats (5/sex/dose) by gavage to a mixture of HBCD dissolved in corn oil at concentrations resulting in doses of 0.3, 1.0, 3.0, 10, 30, 100, and 200 milligrams per kilogram per day (mg/kg/day) for 28 days. The isomeric composition of the HBCD was 10.3%  $\alpha$ , 8.7%  $\beta$ , and 81.0%  $\gamma$ . The authors reported a benchmark dose lower bound confidence limit (BMDL) of 29.9 mg/kg/day for an increase in pituitary weight, a BMDL of 1.6 mg/kg/day for an increase in thyroid weight, and a BMDL of 22.9 mg/kg/day for an increase in liver weight. The increase in thyroid weight was the most sensitive end point observed and, according to research by EPA, is considered relevant to humans (Ref. 36). Additionally, histopathology of the thyroid demonstrated that thyroid follicles were smaller, depleted, and had hypertrophied epithelium in female rats.

In another subacute study, HBCD was administered orally by gavage in corn oil to Sprague-Dawley Crl:CD BR rats for 28 days at doses of 0, 125, 350, or 1,000 mg/kg/day (6 rats/sex/dose in 125 and 350 mg/kg/day groups and 12 rats/sex/dose in the control and 1,000 mg/kg/day groups) (Ref. 33). At the end of 28 days, 6 rats/sex/dose were necropsied, while the remaining rats in the control and 1,000 mg/kg/day groups were untreated for a 14-day recovery period prior to necropsy. The authors reported



increased absolute and liver to body weight ratios in females, but the authors considered the findings to be adaptive and not adverse. This study also identified a no-observed-adverse-effect level (NOAEL) of 1,000 mg/kg/day.

In an older subacute study (Ref. 37), an HBCD product was administered to Sprague-Dawley rat (10/sex/group) at doses of 0, 1, 2.5, and 5% of the diet for 28 days. Doses were calculated to be 0, 940, 2,410, 4,820 mg/kg/day. Mean liver weight (both absolute and relative) was increased in all dose groups, but no microscopic pathology was detected. Thyroid hyperplasia was observed in some animals at all doses in addition to slight numerical development of the follicles and ripening follicles in the ovaries at the high dose. The authors concluded that these observed effects were not pathologic and reported a NOAEL of 940 mg/kg/day (Ref. 37).

In a subchronic study, Chengelis (Refs. 34 and 35) administered HBCD by oral gavage in corn oil daily to Crl:CD(SD)IGS BR rats (15/sex/dose) at dose levels of 0, 100, 300, or 1,000 mg/kg/day for 90 days. At the end of 90 days, 10 rats/sex/dose were necropsied, while the remaining rats were untreated for a 28-day recovery period prior to necropsy. The authors reported significant treatment-related changes in rats, including decreased liver weight and histopathological changes, but the authors considered these changes mild, reversible, and adaptive. Decreased liver weight accompanied by the observed histopathological changes, however, can be considered an adverse effect. Therefore, EPA identified a lowest-observed-adverse-effect level (LOAEL) of 100 mg/kg/day based on these changes.

In an older subchronic study (Ref. 38) an HBCD product was administered to Sprague-Dawley rats (10/sex/group) at doses of 0, 0.16, 0.32, 0.64, and 1.28% of the diet for 90 days. Doses were calculated to be 0, 120, 240, 470, and 950 mg/kg/day. An increase in relative liver weight was observed and was accompanied by fatty accumulation. The pathology report concluded that although fat was visible microscopically in treated rats, the change was not accompanied by any pathology, and therefore could not be defined as "fatty liver." No histological changes were found in any other organ. The authors concluded that the increased liver weight and the fat deposits, both of which were largely reversible when administration of HBCD was stopped, were the result of a temporary increase in the activity of the liver. They identified a NOAEL of 950 mg/kg/day.

4. *Carcinogenicity.* No adequate studies were found evaluating the carcinogenicity of HBCD in animals or humans. One non-guideline study (Ref. 39) was cited in the U.S. EPA's Flame Retardant Alternatives for Hexabromocyclododecane (HBCD): Final Report (Ref. 40), but this study was not adequate to draw conclusions regarding carcinogenicity.

5. *Developmental and reproductive toxicity.* The developmental and reproductive toxicity of HBCD have been investigated in several studies. In a 1-generation study that included additional immunological, endocrine and neurodevelopmental endpoints, van der Ven *et al.* (Ref. 9) exposed Wistar rats (10/sex/dose) to a composite mixture of technical-grade HBCD (10.3%  $\alpha$ , 8.7%  $\beta$ , and 81.0%  $\gamma$ ) in the diet at concentrations resulting in doses of 0.1, 0.3, 1.0, 3.0, 10, 30, or 100 mg/kg/day. In the highest dose group (100 mg/kg/day) body weight decreases of 7–36% in males and 10–20% in females were observed in first generation (F1) pups. The authors observed decreases in kidney and thymus weight in both F1 males and females. Decreases in testes, adrenal, prostate, heart, and brain weights in F1 males were also observed. No histopathological changes, however, were observed in any of these organs. Other developmental effects were observed, including: Immune system effects, indications of liver toxicity, and decreases in bone mineral density at very low doses (*i.e.*, <1.3 mg/kg/day). The authors noted that the vehicle used (corn oil) may have affected some observations at higher doses, including: Increased mortality during lactation, decreased liver weight in males, decreased adrenal weight in females, decreased plasma cholesterol in females, and other immunological markers of toxicity. Increased anogenital distance was observed in males at 100 mg/kg on postnatal day (PND) 4, but not on PND 7 or 21. There was no effect on preputial separation. The time to vaginal opening was delayed in females at the 100 mg/kg dose. There were no effects of HBCD exposure on thyroid hormones triiodothyronine (T3) and thyroxine (T4) in either the parental or F1 animals. There were no effects on thyroid weight or thyroid pathology in the F1 animals (parents were not examined). The most sensitive endpoints with valid benchmark dose (BMD)/BMDL ratios for female rats were decreased bone mineral density with a BMDL of 0.056 mg/kg/day (BMD of 0.18 mg/kg/day) at a benchmark response (BMR) of 10% and decreased concentrations of apolar retinoids in the

liver with a BMDL of 1.3 mg/kg/day (BMD = 5.1 mg/kg/day) at a BMR of 10%. The most sensitive endpoint with a valid BMD/BMDL ratio for male rats was an increased IgG response to sheep red blood cells with a BMDL of 0.46 mg/kg/day (BMD = 1.45 mg/kg/day) at a BMR of 20%. There were no significant effects of HBCD exposure on any measure of reproduction, including: Mating success, time to gestation, duration of gestation, number of implantation sites, pup mortality (at birth and throughout lactation), or sex ratios within a litter. Therefore, a BMDL for reproductive toxicity could not be derived for this study.

Saegusa *et al.* (Ref. 41) exposed pregnant Sprague-Dawley rats (10/sex/dose) to HBCD from gestation day 10 until PND 20 at dietary concentrations of 0, 100, 1,000, or 10,000 parts per million (ppm) in a soy-free diet. The authors observed increased relative thyroid weight and decreased T3 levels in F1 male Sprague-Dawley rats at postnatal week (PNW) 11 following dietary exposure to 1,000 ppm (approximately 146.3 mg/kg/day) HBCD. The authors also reported a significant reduction in the number of CNPase-positive oligodendrocytes at 10,000 ppm (approximately 1,504.8 mg/kg/day). EPA identified a maternal LOAEL of 10,000 ppm (about 1,504.8 mg/kg/day) based on increased incidence of thyroid follicular cell hypertrophy, and a developmental LOAEL of 1,000 ppm (about 146.3 mg/kg/day) based on increased relative thyroid weight and decreased T3 levels in F1 males at PNW 11. Changes in reproductive endpoints (*e.g.*, the number of implantation sites, live offspring, sex ratio) were not observed. Therefore, a LOAEL for reproductive toxicity could not be determined for this study.

Ema *et al.* (Ref. 42) administered HBCD to groups of male and female Crl:CD(SD) rats (24/sex/dose, as a mixture of  $\alpha$ -HBCD,  $\beta$ -HBCD, and  $\gamma$ -HBCD with proportions of 8.5, 7.9, and 83.7%, respectively) in the diet at concentrations of 0, 150, 1,500, or 15,000 ppm from 10 weeks prior to mating through mating, gestation, and lactation. The authors reported a decrease in the number of primordial follicles in F1 female rats at 1,500 ppm (approximately 138 mg/kg/day) and a significant increase in the number of litters lost in the F1 generation at 15,000 ppm (approximately 1,363 mg/kg/day). These authors reported no other significant treatment-related effects in any generation for indicators of reproductive health, including: Estrous cyclicity, sperm count and morphology, copulation index, fertility index,

gestation index, delivery index, gestation length, number of pups delivered, number of litters, or sex ratios. The authors reported a reduced viability index on day 4 and day 21 of lactation among second generation (F2) offspring at 15,000 ppm (approximately 1,363 mg/kg/day). They observed additional developmental effects at doses as low as 1,500 ppm (approximately 115 and 138 mg/kg/day for F1 males and females, respectively), including: An increase in dihydrotestosterone (DHT) in F1 males and an increased incidence of animals with decreased thyroid follicle size in both sexes and generations. These authors reported no effects on sexual development indicated by anogenital distance, vaginal opening, or preputial separation among F1 or F2 generations. The percentage of pups with completed eye opening on PND 14 was significantly decreased compared to controls in F2 females at 1,500 ppm and in F2 males and females at 15,000 ppm. Fewer F2 females exposed to 15,000 ppm HBCD completed the mid-air righting reflex (76.9%) than control F2 females (100%). These findings were not consistent over generations or sexes and were not considered treatment related. No other effects of HBCD exposure on the development of reflexes were observed in either F1 or F2 progeny. EPA identified a maternal LOAEL of 150 ppm (about 14 mg/kg/day) based on increased thyroid-stimulating hormone (TSH). A reproductive LOAEL of 1,500 ppm (about 138 mg/kg/day) was identified based on a decreased number of primordial follicles in the ovary observed in F1 females. A developmental LOAEL of 15,000 ppm (about 1,142 mg/kg/day for males and 1,363 mg/kg/day for females) was identified based on increased pup mortality during lactation in the F2 generation.

Murai *et al.* (Ref. 43) fed female Wistar rats HBCD in the diet at concentrations of 0, 0.01, 0.1, or 1% throughout gestation (Days 0–20). Dams in the high-dose group demonstrated a statistically significant decrease (8.4%) in food consumption and increase in liver weight (13%) in comparison with controls. There were no treatment-related effects on maternal or fetal body weight. There were no effects on the number of implants; number of resorbed, dead, or live fetuses; body weight of live fetuses; or incidence of external or visceral abnormalities. A few skeletal variations were present but were also observed in controls and not considered significant. There were no

effects on weaning or survival. The European Commission (Ref. 44) used the study's data to calculate the doses to be 0, 7.5, 75, and 750 mg/kg/day (based on the assumption of a mean animal weight of 200 grams (g) and food consumption of 15 g/day). They concluded that the offspring NOAEL was 750 mg/kg/day and the maternal LOAEL was 750 mg/kg/day based on a 13% liver weight increase in the high dose group.

Eriksson *et al.* (Ref. 45) conducted a study that examined behavior, learning, and memory in adult mice following exposure to HBCD on PND 10. The authors administered a single oral dose of HBCD (mixture of  $\alpha$ -,  $\beta$ -, and  $\gamma$ -diastereoisomers) dissolved in a fat emulsion at 0, 0.9, or 13.5 mg/kg/day on PND 10 to male and female NMRI mice. The authors concluded that exposure on PND 10 affected spontaneous motor behavior, learning, and memory in adult mice in a dose-dependent manner. The authors identified the lowest exposure level, 0.9 mg/kg, as the LOAEL based on significantly reduced mean locomotor activity compared with controls during the first 20-minute interval of testing. EPA, however, identified a LOAEL of 13.5 mg/kg/day based on decreased habituation, locomotion, and rearing during all intervals. This study was not conducted according to current guidelines (Ref. 46) and Good Laboratory Practices; therefore, EPA reserves judgment on the significance of these findings.

6. *Genotoxicity.* A limited number of studies investigated the genotoxicity of HBCD. These studies indicate that HBCD is not likely to be genotoxic (Refs. 47, 48, 49, 50, 51, 52, 53, and 54).

7. *Conclusions regarding the human hazard potential of HBCD.* The available evidence indicates that HBCD has the potential to cause developmental and reproductive toxicity at moderately low to low doses. While there were some indications of liver toxicity in some short-term and subchronic studies, the evidence for these effects is not sufficient to support listing. The available evidence for developmental and reproductive toxicity, however, is sufficient to conclude that HBCD can be reasonably anticipated to cause moderately high to high chronic toxicity in humans based on the EPCRA section 313 listing criteria published in the **Federal Register** of November 30, 1994 (59 FR 61432) (FRL-4922-2).

#### *B. What is EPA's review of the ecological toxicity of HBCD?*

HBCD can cause effects on survival, growth, reproduction, development, and behavior in aquatic and terrestrial species. Observed acute toxicity values

as low as 0.009 mg/L for a 72-hour EC<sub>50</sub> (*i.e.*, the concentration that is effective in producing a sublethal response in 50% of test organisms) based on reduced growth in the marine algae *Skeletonema costatum* (Ref. 55) indicate high acute aquatic toxicity. Observed chronic aquatic toxicity values as low as 0.0042 mg/L (maximum acceptable toxicant concentration (MATC)) for reduced size (length) of surviving young in water fleas (*Daphnia magna*) (Ref. 56) indicate high chronic aquatic toxicity. Reduced chick survival in Japanese quails (*Coturnix coturnix japonica*) fed a 15 parts per million (ppm) HBCD diet (2.1 mg/kg/day) (Ref. 57 as cited in Ref. 58) and altered reproductive behavior (reduced courtship and brood-rearing activity) and reduced egg size in American kestrels (*Falco sparverius*) fed 0.51 mg/kg/day (Refs. 59, 60, 61, and 62) indicate high toxicity to terrestrial species as well.

Assessment of HBCD's aquatic toxicity is complicated by its low water solubility and differences in the solubility of the three main HBCD isomers, which makes testing difficult and interpretation uncertain for studies conducted above the water solubility. Studies conducted at concentrations above the water solubility of HBCD are essentially testing the effects at the maximum HBCD concentration possible. In some acute and chronic aquatic toxicity studies conducted using methods, test species, and endpoints recommended by EPA, no effects were reported at or near the limit of water solubility. However, water solubility is not considered a limiting factor for hazard determination for aquatic species since there are studies showing adverse effects at or below the water solubility of HBCD. In addition, the potential for HBCD to bioaccumulate, biomagnify, and persist in the environment, significantly increases concerns for effects on aquatic organisms.

A wide range of effects of HBCD have been reported in fish (*e.g.*, developmental toxicity, embryo malformations, reduced hatching success, reduced growth, hepatic enzyme and biomarker effects, thyroid effects, deoxyribonucleic acid (DNA) damage to erythrocytes, and oxidative damage) and in invertebrates (*e.g.*, degenerative changes, morphological abnormalities, decreased hatching success, and altered enzyme activity) (Refs. 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, and 74). Reduced thyroid hormone (triiodothyronine, T3, and thyroxine, T4) levels in rainbow trout (*Oncorhynchus mykiss*) (Refs. 68 and 69), are similar to those observed in mammals. Reduced T4 levels were also

reported in birds exposed to HBCD (Ref. 61).

1. *Acute aquatic toxicity.* Adverse effects observed following acute exposure were found in studies with marine algae, including EPA-recommended estuarine/marine algae species *Skeletonema costatum* (Ref. 75 as cited in Refs. 44 and 76, Refs. 55 and 77), a series of short-term (72 to 120-hour) early life stage tests with zebrafish (*Danio rerio*) embryos (Refs. 64, 65, 67, and 72), and short-term (72-hour) results from an early life stage test with sea urchin embryos (Ref. 63). Effects in these studies, reported at concentrations as low as 0.009 mg/L (measured) in algae, 0.01 mg/L (nominal) in zebrafish embryos, and 0.064 mg/L (nominal) in sea urchin embryos, indicate high acute toxicity. Walsh *et al.* (Ref. 55) reported measured 72-hour EC<sub>50</sub> values in *Skeletonema costatum* ranging from 0.009 to 0.012 mg/L based on reduced growth rate in five different types of saltwater media (0.010 mg/L in seawater itself). The study tested two other marine algal species, *Chlorella sp.* and *Thalassiosira pseudonana*, that were also found to be inhibited by HBCD, albeit at higher concentrations than *Skeletonema costatum*. EC<sub>50</sub> values for reduced growth in these species were 0.05–0.37 mg/L (0.08 mg/L in seawater) for *Thalassiosira pseudonana* and >1.5 mg/L for *Chlorella sp.*

Subsequent studies by Desjardins *et al.* (Ref. 75) confirmed the high acute toxicity of HBCD to *Skeletonema costatum*. In these studies, single concentrations were tested, but the assays were conducted without solvent and the concentrations were measured. Desjardins *et al.* (Ref. 75) reported approximately 10% inhibition of growth in *Skeletonema costatum* exposed to 0.041 mg/L for 72 hours. Desjardins *et al.* (Ref. 77) found that a saturated solution of 0.0545 mg/L resulted in 51% growth inhibition after 72 hours of exposure. The latter result corresponds to an approximate EC<sub>50</sub> of 0.052 mg/L.

Zebrafish embryo studies reported a variety of effects on embryos and larvae at low HBCD concentrations. In the Deng *et al.* (Ref. 64) study, developmental toxicity endpoints were assessed at 96 hours post-fertilization in embryos/larvae exposed to HBCD starting 4 hours post-fertilization. Survival of embryos/larvae was significantly reduced at all tested concentrations, making the low concentration of 0.05 mg/L the lowest-observed-effect-concentration (LOEC) in this study; a no-observed-effect-concentration (NOEC) was not established. Embryonic malformation rate was significantly increased and

larval growth significantly decreased at ≥0.1 mg/L. Malformations included epiboly deformities, yolk sac and pericardial edema, tail and heart malformations, swim bladder inflation, and spinal curvature. Embryo hatching rate was reduced only at the high concentration of 1 mg/L. Heart rate, a marker for cardiac developmental toxicity, was significantly decreased at all tested concentrations. Associated mechanistic studies suggest the mechanism for developmental toxicity involves the generation of reactive oxygen species (ROS) and the consequent triggering of apoptosis genes. Increased ROS formation (indicative of oxidative stress) was observed at a nominal concentration of 0.1 mg/L. In the same study, zebrafish embryos exposed to HBCD exhibited increased expression of pro-apoptotic genes (Bax, P53, Puma, Apaf-1, caspase 3, and caspase-9), decreased expression of anti-apoptotic genes (Mdm2 and Bcl-2), and increased activity of enzymes involved in apoptosis (caspase-3 and caspase-9) with LOECs of 0.05–1 mg/L.

Hu *et al.* (Ref. 67) found that hatching of zebrafish embryos was delayed at 0.002 mg/L, the lowest concentration tested, and other concentrations up to and including 0.5 mg/L, but not the two high concentrations of 2.5 and 10 mg/L. The same authors observed an increase in heat shock protein (Hsp70) at 0.01 mg/L and an increase in malondialdehyde activity, used as a measure of lipid peroxidation, at 0.5 mg/L. The activity of superoxide dismutase was increased at 0.1 mg/L, but decreased at 2.5 and 10 mg/L. The authors concluded that HBCD can cause oxidative stress and over expression of Hsp70 in acute exposures of zebrafish embryos.

Du *et al.* (Ref. 65) exposed zebrafish embryos 4 hours post-fertilization to each of three diastereomers of HBCD ( $\alpha$ -,  $\beta$ -, and  $\gamma$ -HBCD) individually at nominal concentrations of 0.01, 0.1, and 1.0 mg/L. Hatching success was reduced after 68 hours of exposure to  $\gamma$ -HBCD at the lowest concentration (0.01 mg/L), but a higher concentration of  $\alpha$ - or  $\beta$ -HBCD (0.1 mg/L) was necessary to reduce hatching success. After 92 hours, survival was reduced at concentrations of 0.01, 0.1, and 1 mg/L of  $\gamma$ -,  $\beta$ -, and  $\alpha$ -HBCD, respectively. Growth, measured as body length of larvae after 92 hours of exposure, was reduced at 0.1 mg/L of  $\beta$ - and  $\gamma$ -HBCD and at 1 mg/L of  $\alpha$ -HBCD. After 116 hours of exposure, malformations were observed at all test concentrations of  $\beta$ - and  $\gamma$ -HBCD and at 0.1 mg/L and above for  $\alpha$ -HBCD. Effects on heart rate varied

depending upon the length of exposure; reduced heart rate was observed at 0.1 mg/L of  $\beta$ - and  $\gamma$ -HBCD or 1 mg/L of  $\alpha$ -HBCD at 44 hours and at 0.1 mg/L of  $\alpha$ - and  $\beta$ -HBCD at 92 hours, whereas  $\gamma$ -HBCD resulted in an increase in heart rate at 1 mg/L at 92 hours. An increase in generation of ROS was observed after 116 hours at 0.1 mg/L of  $\beta$ - and  $\gamma$ -HBCD and at 1 mg/L of  $\alpha$ -HBCD. Activities of caspase-3 and caspase-9 enzymes, indicative of apoptosis, were increased after 116 hours at 0.1 mg/L of  $\gamma$ -HBCD and at 1 mg/L of  $\alpha$ - and  $\beta$ -HBCD. The authors ranked the HBCD diastereomers in the following order for developmental toxicity to zebrafish:  $\gamma$ -HBCD >  $\beta$  HBCD >  $\alpha$ -HBCD.

Effects indicative of oxidative stress, as seen in the zebrafish embryo studies, were also found in clams. Zhang *et al.* (Ref. 74) measured parameters indicative of antioxidant defenses and oxidative stress after 1, 3, 6, 10, and 15 days of exposure to low nominal concentrations of HBCD ranging from 0.000086 to 0.0086 mg/L in the clam *Venerupis philippinarum*. Increases in ethoxyresorufin-o-deethylase (EROD) activity, glutathione (GSH) content, and DNA damage were observed in clams exposed to 0.00086 mg/L, while increased lipid peroxidation (LPO) was observed at 0.0086 mg/L. These same effects were observed at lower concentrations as the length of exposure increased.

Anselmo *et al.* (Ref. 63) exposed sea urchin (*Psammechinus miliaris*) embryos to HBCD in an early life stage test. Newly-fertilized embryos were exposed to HBCD at nominal concentrations of 0, 9, 25, 50, and 100 nanomolar (nM) (0, 0.0058, 0.016, 0.032, and 0.064 mg/L, respectively) in dimethyl sulfoxide solvent and evaluated at 72 hours post-fertilization. A significant increase in morphological abnormalities was found at a nominal concentration of 100 nM HBCD (0.064 mg/L), the highest concentration tested. Observed malformations included short or deformed larval arms and slight edema around the larval body. The NOEC for this effect at 72 hours was 0.032 mg/L.

2. *Chronic aquatic toxicity.* A measured MATC of 0.0042 mg/L, based on reduced size (length) of surviving young water fleas (*Daphnia magna*), indicates high chronic toxicity (Ref. 56). This study reported additional effects, including decreased reproductive rate and decreased mean weight of surviving young at 0.011 mg/L. Other effects reported following chronic exposure to HBCD included degenerative changes in the gills of clams (*Macoma balthica*), manifested by the increased frequency

of nuclear and nucleolar abnormalities and the occurrence of dead cells, at nominal concentrations of  $\geq 0.1$  mg/L (50-day LOEC) (Ref. 71), a nominal MATC of 0.045 mg/L for increased morphological abnormalities in sea urchin (*P. miliaris*) embryos exposed to HBCD for up to 16 days in an early life stage test (Ref. 63), and a nominal MATC of 0.03 mg/L for increased malformation rate in marine medaka (*Oryzias melastigma*) embryos exposed to HBCD for 17 days in an early life stage test (Ref. 66). The developmental abnormalities in medaka included yolk sac edema, pericardial edema, and spinal curvature (Ref. 66). Mechanistic findings in this study included increases in heart rate and sinus venosus-bulbus arteriosus (SV-BA) distance, which are markers for cardiac development, induction of oxidative stress and apoptosis, and suppression of nucleotide and protein synthesis.

Thyroid effects were reported in juvenile rainbow trout (*Oncorhynchus mykiss*) following dietary exposure to HBCD (Refs. 68 and 69). Each of the diastereomers of HBCD (administered separately via diet at concentrations of 5 ng/g of  $\alpha$ -,  $\beta$ -, or  $\gamma$ -HBCD for up to 56 days) disrupted thyroid homeostasis, as indicated by lower free circulating T3 and T4 levels.

The mechanisms of the effects on fish and invertebrates following chronic exposure were similar to those found in acute studies. Effects observed in fish include increased formation of ROS resulting in oxidative damage to lipids, proteins, and DNA, decreased antioxidant capacities in fish tissue (e.g., brains, hepatocytes, or erythrocytes), and increasing levels of EROD (detoxification enzyme) and PentoxyResorufin-O-Deethylase (PROD, detoxification enzyme) levels in hepatocytes of fish exposed to the nominal concentration of  $\geq 0.1$  mg/L (corresponds to  $\sim 0.2$  mg/g whole fish (wet weight)) for 42 days (Ref. 73). Ronisz *et al.* (Ref. 70) found a significant increase in hepatic cytosolic catalase activity in rainbow trout (*Oncorhynchus mykiss*) 5 days after a single intraperitoneal injection of 50 mg/kg was administered. The same authors observed reductions in liver somatic index (LSI) and EROD activity in a 28-day study in which rainbow trout were injected intraperitoneally with HBCD on days 1 and 14 at a dose somewhat less than 500 mg/kg. Zhang *et al.* (Ref. 74) observed the following signs of oxidative stress in clams (*V. philippinarum*) after 15 days of exposure to HBCD: The activities of antioxidant enzymes (EROD, superoxide

dismutase (SOD), and glutathione-S-transferase (GST)), as well as GSH content, were increased at 0.000086 mg/L, the lowest concentration tested. In addition, LPO was increased at 0.00086 mg/L and DNA damage was increased at 0.0086 mg/L.

3. *Terrestrial toxicity and phytotoxicity.* Japanese quail (*Coturnix coturnix japonica*) exposed for 6 weeks to an isomeric mixture of HBCD in the diet experienced a reduction in hatchability at all tested concentrations (12–1,000 ppm) (Ref. 57). Additional effects included a significant reduction in egg shell thickness starting at 125 ppm, decreases in egg weights and egg production rates starting at 500 ppm, increases in cracked eggs starting at 500 ppm, and adult mortality at 1,000 ppm. A subsequent test, conducted at lower dietary concentrations, determined LOAEL and NOAEL values of 15 and 5 ppm, respectively, based on significant reduction of survival of chicks hatched from eggs of quails fed HBCD (Ref. 57).

Several studies have been conducted examining effects of HBCD on American kestrels (*Falco sparverius*). Kobiliris (Ref. 78) reported a reduced “corticosterone response” (where “corticosterone response” was defined as a stimulation of the adrenal cortex to produce and release corticosterone into the bloodstream), reduced flying activities of juvenile males during hunting behavior trials, and delayed response times of juvenile females during predator avoidance behavior trials in American kestrels exposed in ovo to 164.13 ng/g wet weight. Kestrels exposed via the diet to 0.51 mg/kg/day beginning 3 weeks prior to pairing and continuing until the first chick hatched began to lay eggs 6 days earlier than controls and laid larger clutches of smaller eggs (Ref. 59). Although the technical mixture of HBCD stereoisomers contained predominantly  $\gamma$ -HBCD (80% of the mixture), the main isomer found in eggs was  $\alpha$ -HBCD (>90% of the total HBCD in eggs). In a subsequent study, Martinson *et al.* (Ref. 61) exposed kestrels to dietary HBCD at the same dose (0.51 mg/kg/day) and found increased testes weight in unpaired males, a marginally significant effect on testis histology in unpaired males (increased number of seminiferous tubules containing elongated spermatids;  $p = 0.052$ ), marginally increased testosterone levels in breeding males (increased at the time the first egg was laid;  $p = 0.054$ ), and no significant effect on sperm counts. Plasma T4 levels were reduced in breeding males throughout the study, which the authors took to suggest that

thyroid disruption that may have contributed to the observed increase in testes weight. Martinson *et al.* (Ref. 62) found altered reproductive behavior in both sexes of kestrels fed 0.51 mg/kg/day, including reduced activity in both sexes during courtship and in males during brood rearing, which may have contributed to the observed reduction in incubation nest temperature and also to the reduced egg size reported previously by Fernie *et al.* (Ref. 58). In a 22-day study of chickens (*Gallus gallus domesticus*) exposed to HBCD in ovo, reduced pipping success was observed at 100 ng/g egg (Ref. 79).

The accumulation and toxicity of  $\alpha$ -,  $\beta$ -, and  $\gamma$ -HBCDs in maize have been studied (Ref. 80). The order of accumulation in roots was  $\beta$ -HBCD >  $\alpha$ -HBCD >  $\gamma$ -HBCD and in shoots it was  $\beta$ -HBCD >  $\gamma$ -HBCD >  $\alpha$ -HBCD. In maize exposed to 2  $\mu$ g/L HBCD, the inhibitory effect of the diastereomers on the early development of maize as well as the intensities of hydroxyl radical and histone H2AX phosphorylation followed the order  $\alpha$ -HBCD >  $\beta$ -HBCD >  $\gamma$ -HBCD, which indicates diastereomer-specific oxidative stress and DNA damage in maize. The study confirmed that for maize exposed to HBCDs, the generation of reactive oxygen species was one, but not the only, mechanism for DNA damage.

4. *Conclusions regarding the ecological hazard potential of HBCD.* HBCD has been shown to cause acute toxicity to aquatic organisms at concentrations as low as 0.009 mg/L and chronic toxicity at concentrations as low as 0.0042 mg/L. Toxicity to terrestrial species has been observed at doses as low as 0.51 mg/kg/day. The available evidence shows that HBCD is highly toxic to aquatic and terrestrial species.

#### C. What is EPA's review of the bioaccumulation data for HBCD?

HBCD has been shown in numerous studies to bioaccumulate in aquatic species and biomagnify in aquatic and terrestrial food chains (Ref. 1). BCFs for HBCD in fish in the peer-reviewed literature range as high as 18,100 (Refs. 81, 82, and 83). Some of the bioaccumulation values for fish species and a freshwater food web are shown in Table 1. The complete listing of the available bioaccumulation data and more details about the studies can be found in the ecological assessment (Ref. 1).

TABLE 1—HBCD BCF AND BAF DATA FOR FISH AND FRESHWATER FOOD WEB

Species	Duration and test end-point	Value	Reference
Rainbow trout ( <i>Oncorhynchus mykiss</i> ) .....	35-day BCF .....	8,974 and 13,085 .....	Ref. 81.
Fathead minnow ( <i>Pimephales promelas</i> ) .....	32-day BCF .....	18,100 .....	Ref. 82.
Mirror carp ( <i>Cyprinus carpio morpha noblis</i> ) .....	30-day exposure and 30-day depuration BCF.	$\alpha$ -HBCD: 5,570–11,500 .....	Ref. 83.
		$\beta$ -HBCD: 187–642	
		$\gamma$ -HBCD: 221–584	
Mud carp ( <i>Cirrhinus molitorella</i> ), Nile tilapia ( <i>Tilapia nilotica</i> ), and suckermouth catfish ( <i>Hypostomus plecostomus</i> ) .....	Log BAF .....	4.8–7.7 for HBCD isomers ( $\alpha$ -HBCD had higher BAFs than $\beta$ - and $\gamma$ -HBCD) (BAFs ranged from ~63,000 to 50,000,000).	Ref. 84.
Freshwater food web .....	Log BAF .....	$\alpha$ -HBCD: 2.58–6.01 .....	Ref. 85.
		$\beta$ -HBCD: 3.24–5.58	
		$\gamma$ -HBCD: 3.44–5.98	
		$\Sigma$ HBCDs: 2.85–5.98	
		(BAFs range from ~700 to 950,000) .....	

Drottler and Kruger (Ref. 81) provided strong evidence that HBCD bioaccumulates in a study conducted according to established guidelines (OECD Test Guideline (TG) 305 and Office of Prevention, Pesticides and Toxic Substances (OPPTS) 850.1730). In this study, BCFs of 13,085 and 8,974 were reported in rainbow trout (*O. mykiss*) exposed to 0.18 and 1.8  $\mu\text{g/L}$ , respectively. Concentrations of HBCD in tissue reached steady-state at day 14 for fish exposed to 1.8  $\mu\text{g/L}$  and, during the subsequent depuration stage, a 50% reduction of HBCD from edible and non-edible tissue and whole fish was reported on days 19 and 20 post-exposure. In fish exposed to 0.18  $\mu\text{g/L}$ , an apparent steady-state was reached on day 21, but on day 35, the tissue concentration of HBCD in fish increased noticeably; thus, steady-state was not achieved according to study authors, and BCF values (for the exposure concentration of 0.18  $\mu\text{g/L}$ ) were calculated based on day 35 tissue concentrations. Clearance of 50% HBCD from tissue of 0.18  $\mu\text{g/L}$  exposed fish occurred 30–35 days post-exposure.

Veith *et al.* (Ref. 82) further supports the conclusion that HBCD bioaccumulates in a study conducted prior to the establishment of standardized testing guidelines for bioconcentration studies. The study reported a BCF of 18,100 following exposure of fathead minnows to 6.2  $\mu\text{g/L}$ ; the BCF was identified as a steady-state BCF, but the report does not indicate the time when steady-state was reached. A depuration phase was not included in this study. Zhang *et al.* (Ref. 83) calculated BCFs for each HBCD diastereomer in mirror carp and found strong evidence that  $\alpha$ -HBCD (BCF of

5,570–11,500) is much more bioaccumulative than  $\beta$ - and  $\gamma$ -HBCD (BCF of 187–642); BCF values that were normalized to lipid content were much higher (30,700–45,200 for  $\alpha$ -HBCD, 1,030–1,900 for  $\beta$ -HBCD, and 950–1,730 for  $\gamma$ -HBCD) than non-normalized BCFs.

BAFs, which capture accumulation of HBCD from diet as well as water and sediment, were calculated for freshwater food webs in industrialized areas of Southern China in two separate field studies. He *et al.* (Ref. 84) calculated log BAFs of 4.8–7.7 (corresponding to BAFs of 63,000–50,000,000) for HBCD isomers in carp, tilapia, and catfish, and found higher BAFs for  $\alpha$ -HBCD than  $\beta$ - and  $\gamma$ -HBCD. In a pond near an e-waste recycling site, Wu *et al.* (Ref. 85) calculated log BAFs of 2.85–5.98 for HBCD (corresponding to BAFs of 700–950,000) in a freshwater food web. Log BAFs for each diastereomer in this study were comparable to one another (see Table 1). La Guardia *et al.* (Ref. 86) calculated log BAFs in bivalves and gastropods collected downstream of a textile manufacturing outfall; these ranged from 4.2 to 5.3 for  $\alpha$ - and  $\beta$ -HBCD (BAFs of 16,000–200,000), and from 3.2 to 4.8 for  $\gamma$ -HBCD (BAFs of 1,600–63,000).

In general,  $\alpha$ -HBCD bioaccumulates in organisms and biomagnifies through food webs to a greater extent than the  $\beta$ - and  $\gamma$ -diastereomers. Uncertainty remains as to the balance of diastereomer accumulation in various species and the extent to which bioisomerization and biotransformation rates for each isomer affect bioaccumulation potential. Some authors (*e.g.*, Law *et al.*, Ref. 87) have proposed that  $\gamma$ -HBCD isomerizes to  $\alpha$ -HBCD under physiological conditions,

rather than uptake being diastereomer-specific. To test this theory, Esslinger *et al.* (Ref. 88) exposed mirror carp (*Cyprinus carpio morpha noblis*) to only  $\gamma$ -HBCD and found no evidence of bioisomerization. In contrast, when Du *et al.* (Ref. 89) exposed zebrafish (*Danio rerio*) to only  $\gamma$ -HBCD, they found detectable levels of  $\alpha$ -HBCD in fish tissue, suggesting that bioisomerization occurred. Marvin *et al.* (Ref. 90) hypothesized that differences in accumulation could also be due in part to a combination of differences in solubility, bioavailability, and uptake and depuration kinetics.

Zhang *et al.* (Ref. 91) calculated diastereomer-specific BCFs in algae and cyanobacteria ranging from 174 to 469. For the cyanobacteria (*Spirulina subsalsa*), the BCF for  $\alpha$ -HBCD (350) was higher than the BCFs for  $\beta$ -HBCD (270) and  $\gamma$ -HBCD (174). However, for the tested alga (*Scenedesmus obliquus*), the BCF for  $\beta$ -HBCD (469) was higher than that for the other isomers (390–407).

In summary, HBCD has been shown in numerous studies to be highly bioaccumulative in aquatic species and biomagnify in aquatic and terrestrial food chains; however, diastereomer- and enantiomer-specific mechanisms of accumulation are still unclear.

#### D. What is EPA's review of the persistence data for HBCD?

There are limited data available on the degradation rates of HBCD under environmental conditions. A short summary of the environmental fate and persistence data for HBCD is presented in Table 2; additional details about this data can be found in the HBCD hazard assessment (Ref. 1).

TABLE 2—ENVIRONMENTAL DEGRADATION OF HBCD

Property	Value	Reference
<b>Air</b>		
Photodegradation .....	Photo-induced isomerization of $\gamma$ -HBCD to $\alpha$ -HBCD in indoor dust with a measured decrease in HBCD concentration concurrent with an increase of pentabromocyclododecenes (PBCDs) in indoor dust. Indirect photolysis half-life: 26 hours AOPWIN v1.92 (estimated) .....	Ref. 9.2. Ref. 93.
<b>Water</b>		
Hydrolysis .....	Not expected due to lack of functional groups that hydrolyze under environmental conditions and low water solubility (estimated).	Ref. 44.
<b>Sediment</b>		
Aerobic conditions .....	No biodegradation observed in 28-day closed-bottle test .....	Refs. 76 and 94.
	Half-life: 128, 92, and 72 days for $\alpha$ -, $\gamma$ -, and $\beta$ -HBCD, respectively (estimated), based on a 44% decrease in total initial radioactivity in viable freshwater sediment.	Ref. 95.
	Half-life: >120 days (estimated), based on a 15% decrease in total initial radioactivity in abiotic freshwater sediment.	
	Half-life: 11 and 32 days (estimated) in viable sediment collected from Schuylkill River and Neshaminy creek, respectively.	Ref. 96.
	Half-life: 190 and 30 days (estimated) in abiotic sediment collected from Schuylkill River and Neshaminy creek.	
Anaerobic conditions .....	Half-life: 92 days (estimated), based on a 61% decrease in total initial radioactivity in viable freshwater sediment.	Ref. 95.
	Half-life: >120 days (estimated), based on a 33% decrease in total initial radioactivity in abiotic freshwater sediment.	
	Half-life: 1.5 and 1.1 days (estimated) in viable sediment collected from Schuylkill River and Neshaminy creek.	Ref. 96.
	Half-life: 10 and 9.9 days (estimated) in abiotic sediment collected from Schuylkill River and Neshaminy creek.	
<b>Soil</b>		
Aerobic conditions .....	Half-life: >120 days (estimated), based on a 10% decrease in total initial radioactivity in viable soil.	Ref. 95.
	Half-life: >120 days (estimated), based on a 6% decrease in total initial radioactivity in abiotic soil.	
	Half-life: 63 days (estimated) in viable soil amended with activated sludge .....	Ref. 96.
	Half-life: >120 days (estimated) in abiotic soil.	
Anaerobic conditions .....	Half-life: 6.9 days (estimated) in viable soil amended with activated sludge .....	Ref. 96.
	Half-life: 82 days (estimated) in abiotic soil using a nominal HBCD concentration of 0.025 mg/kg dry weight.	

1. *Abiotic degradation.* HBCD is not expected to undergo significant direct photolysis since it does not absorb radiation in the environmentally available region of the electromagnetic spectrum that has the potential to cause molecular degradation (Ref. 97). Although HBCD is expected to exist primarily in the particulate phase in the atmosphere, a small percentage may also exist in the vapor phase based on its vapor pressure (Refs. 22, 90, 98, and 99). HBCD in the vapor phase will be degraded by reaction with photochemically produced hydroxyl radicals in the atmosphere. An estimated rate constant of  $5.01 \times 10^{-12}$  cubic centimeters ( $\text{cm}^3$ )/molecules-second at 25 °C for this reaction corresponds to a half-life of 26 hours, assuming an atmospheric hydroxyl radical concentration of  $1.5 \times 10^6$  molecules/ $\text{cm}^3$  and a 12-hour day (Refs. 93 and 100).

Photolytic isomerization of HBCD has been described in both indoor dust samples and in samples of HBCD standards dissolved in methanol using artificial light (Ref. 92). After 1 week in the presence of light, indoor dust containing predominantly  $\gamma$ -HBCD was found to decrease in  $\gamma$ -HBCD and increase in  $\alpha$ -HBCD concentration. There was a measured decrease in HBCD concentration concurrent with an increase in PBCDs in the indoor dust exposed to artificial light. The three diastereomerically-pure HBCD standards ( $\alpha$ -,  $\beta$ -, and  $\gamma$ -HBCD) that were dissolved in methanol also began to interconvert within 1 week, resulting in a decrease in  $\gamma$ -HBCD concentration and an increase in  $\alpha$ -HBCD concentration.

HBCD is not expected to undergo hydrolysis in environmental waters due to lack of functional groups that hydrolyze under environmental

conditions and the low water solubility of HBCD (Ref. 44).

Observed abiotic degradation of HBCD during simulation tests based on Organisation for Economic Cooperation and Development (OECD) methods 307 and 308 was approximately 33% in anaerobic freshwater sediment, 15% in aerobic freshwater sediment, and 6% in aerobic soil after 112–113 days (Refs. 44 and 95). The results from these studies correspond to estimated half-lives >120 days in soil and sediment due to minimal degradation being observed. Initial concentrations of  $^{14}\text{C}$  radiolabeled HBCD ( $\alpha$ -,  $\beta$ -, and  $\gamma$ - $^{14}\text{C}$ -HBCD in a ratio of 7.74:7.84:81.5) were 3.0–4.7 mg/kg dry weight in the sediment and soil systems. HBCD degradation observed under abiotic conditions was attributed to abiotic reductive dehalogenation (Refs. 44, 76, and 95). Degradation proceeded through a stepwise process to form

tetrabromocyclododecene, dibromocyclododecadiene (DBCD), and 1,5,9-cyclododecatriene (Refs. 44 and 95). Further degradation of 1,5,9-cyclododecatriene was not observed. In this study, HBCD degradation occurred faster in sediment than in soil and faster under anaerobic conditions compared to aerobic conditions (Refs. 44 and 95).

Previous OECD 308 and 307 based simulation tests from the same authors (Davis *et al.* 2005, Ref. 96) presented results suggesting faster abiotic degradation, particularly in sediment under anaerobic conditions, but were performed at much lower HBCD concentrations and measured only  $\gamma$ -HBCD (Refs. 44, 76, 90, 96, and 101). In this study, abiotic degradation half-lives in freshwater sediments were 30–190 days under aerobic conditions and 9.9–10 days under anaerobic conditions. Estimated half-lives in abiotic soil were >120 days under aerobic conditions and 82 days under anaerobic conditions. This study evaluated  $\gamma$ -HBCD only and did not address interconversion of HBCD isomers or  $\alpha$ - and  $\beta$ -HBCD degradation. The initial concentrations of HBCD were 0.025–0.089 mg/kg dry weight in the sediment and soil systems, nearly 100 times less than the HBCD concentrations used in the subsequent Davis *et al.* 2006 study (Ref. 95). Higher concentrations of HBCD (3.0–4.7 mg/kg dry weight) in the Davis *et al.* 2006 study (Ref. 95) allowed for quantification of individual isomers, metabolite identification and mass balance evaluation (Refs. 95 and 101). Additionally, the Davis *et al.* 2005 study (Ref. 96) was considered to be of uncertain reliability for quantifying HBCD persistence because of concerns regarding potential contamination of sediment samples, an interfering peak corresponding to  $\gamma$ -HBCD in the liquid chromatography/mass spectrometry (LC/MS) chromatograms, and poor extraction of HBCD leading to HBCD recoveries of 33–125% (Refs. 44 and 101).

2. *Biotic degradation.* A few studies on the biodegradation of HBCD were located. A closed bottle screening-level test for ready biodegradability (OECD Guideline 301D, EPA OTS 796.3200) was performed using an initial HBCD concentration of 7.7 mg/L and an activated domestic sludge inoculum (Refs. 76 and 94). No biodegradation was observed (0% of the theoretical oxygen demand) over the test period of 28 days under the stringent guideline conditions of this test.

Degradation of HBCD during simulation tests with viable microbes, based on OECD methods 307 and 308, was approximately 61% in anaerobic

freshwater sediment, 44% in aerobic freshwater sediment, and 10% in aerobic soil after 112–113 days (Refs. 44 and 95). The results from this study correspond to estimated HBCD half-lives of 92 days in anaerobic freshwater sediment, 128, 92, and 72 days for  $\alpha$ -,  $\gamma$ -, and  $\beta$ -HBCD, respectively in aerobic freshwater sediment, and >120 days in aerobic soil. An initial total  $^{14}\text{C}$ -HBCD concentration of 3.0–4.7 mg/kg dry weight in the sediment and soil systems was used, allowing for quantification of individual isomers, metabolite identification, and mass balance evaluation (Refs. 95 and 101). Although very high spiking rates can be toxic to microorganisms in biodegradation studies and lead to unrealistically long estimated half-lives, the results of this study did not suggest toxicity to microorganisms. Tests with viable microbes demonstrated increased HBCD degradation compared to the biologically-inhibited control studies. In combination, these studies suggest that HBCD will degrade slowly in the environment, although faster in sediment than in soil, faster under anaerobic conditions than aerobic conditions, faster with microbial action than without microbial action, and at different rates for individual HBCD diastereomers (slower for  $\alpha$ -HBCD than for the  $\gamma$ - and  $\beta$ -stereoisomers).

The same researchers (Ref. 76) previously conducted a water-sediment simulation test for commercial HBCD based on OECD guideline 308 using nominal HBCD concentrations of 0.034–0.089 mg/kg dry weight (Refs. 44, 76, and 102). Aerobic and anaerobic microcosms were pre-incubated at 20 °C for 49 days and at 23 °C for 43–44 days, respectively. HBCD was then added to 14–37 g dry weight freshwater sediment samples in 250 ml serum bottles (water:sediment ratio of 1.6–2.9) and the microcosms were sealed and incubated in the dark at 20 °C for up to 119 days. For the aerobic microcosms, the headspace oxygen concentration was kept above 10–15%. This study evaluated only  $\gamma$ -HBCD and did not address interconversion of HBCD isomers or  $\alpha$ - and  $\beta$ -HBCD degradation. Disappearance half-lives of HBCD with sediment collected from Schuylkill River and Neshaminy creek were 11 and 32 days in viable aerobic sediments, respectively (compared to 190 and 30 days in abiotic aerobic controls, respectively), and 1.5 and 1.1 days in viable anaerobic sediments, respectively (compared to 10 and 9.9 days in abiotic anaerobic controls).

Data from these tests suggest that anaerobic degradation is faster than aerobic degradation of HBCD in viable

and abiotic sediments and that degradation is faster in viable conditions than abiotic conditions. While these findings are consistent with Davis *et al.* 2006 (Ref. 95), the actual degradation rates in this study are much faster. However, results from this study do not provide a reliable indication of HBCD persistence. A mass balance could not be established because only  $\gamma$ -HBCD was used to quantify HBCD concentrations,  $^{14}\text{C}$ -radiolabelled HBCD was not used, and degradation products were not identified; therefore, apparent disappearance of HBCD in this study may not reflect biodegradation. In addition, there were concerns that contaminated sediment may have been used, HBCD extraction was incomplete (HBCD recovery varied from 33 to 125%), and an interfering peak was observed in the LC/MS chromatograms corresponding to  $\gamma$ -HBCD (Refs. 44 and 101).

Similarly, a soil simulation test was conducted based on OECD guideline 307 for commercial HBCD using 50 g dry weight sandy loam soil samples added to 250 ml serum bottles (Refs. 44, 76, 96, and 103). The moisture content was 20% by weight. Aerobic and anaerobic microcosms were pre-incubated at 20 °C for 35 days and at 23 °C for 43 days, respectively. Activated sludge was added to the soil at 5 mg/g, and HBCD was added to the soil to achieve a nominal concentration of 0.025 mg/kg dry weight. The microcosms were then incubated in the dark at 20 °C for up to 120 days. The disappearance half-lives were 63 days in viable aerobic soil (compared to >120 days in abiotic aerobic controls) and 6.9 days in viable anaerobic soil (compared to 82 days in abiotic anaerobic controls). As in the sediment studies, HBCD degradation in soil occurred faster under anaerobic conditions compared to aerobic conditions, and faster in viable conditions than abiotic conditions. The disappearance half-lives in soil were slower than those in sediment.

Biological processes were suggested to be responsible for the increased degradation of HBCD in this study using viable conditions, relative to abiotic conditions; however, degradation was not adequately demonstrated in soil because no degradation products were detected and only  $\gamma$ -HBCD was used to quantify HBCD concentrations, making it impossible to calculate a mass balance. HBCD recoveries on day 0 of the experiment were well below (0.011–0.018 mg/kg dry weight) the nominal test concentrations (0.025 mg/kg dry weight), suggesting rapid adsorption of HBCD to soil and poor extraction methods (Refs. 44 and 101).



In studies using 0.025–0.089 mg/kg HBCD (Davis *et al.* 2005, Ref. 96), the estimated half-life values were shorter than studies using 3.0–4.7 mg/kg HBCD (Davis *et al.* 2006, Ref. 95) by approximately one order of magnitude for aerobic viable sediment (11–32 days compared to 72–128 days) and anaerobic viable sediment (1.1–1.5 days compared to 92 days). The viable aerobic soil half-life using lower concentrations of HBCD (Davis *et al.* 2005, Ref. 96) was less than half of the half-life based on the higher HBCD concentration (63 days compared to >120 days) (Davis *et al.* 2006, Ref. 95). Both Davis *et al.* studies (Refs. 95 and 96) suggest that HBCD degrades faster in sediment than in soil, faster under anaerobic conditions than aerobic conditions, and faster with microbial action than without microbial action. HBCD is poorly soluble, and it was suggested that at higher concentrations of HBCD, degradation is limited by mass transfer of HBCD into microbes. However, results from the Davis *et al.* 2005 study (Ref. 96) likely overestimate the rate of HBCD biodegradation, for the reasons noted previously (primarily, failure to use <sup>14</sup>C-radiolabelled HBCD, quantify isomers other than  $\gamma$ -HBCD, identify degradation products, or establish a mass balance, but also procedural problems with contamination of sediment, incomplete HBCD extraction, and occurrence of an interfering peak in the LC/MS chromatograms corresponding to  $\gamma$ -HBCD).

It is important to note that the rapid biodegradation rates from Davis *et al.* 2005 (Ref. 96) are not consistent with environmental observations. HBCD has been detected over large areas and in remote locations in environmental monitoring studies (Refs 1 and 104). Dated sediment core samples indicate slow environmental degradation rates (Refs. 44, 90, 96, and 101). For example, HBCD was found at concentrations ranging from 112 to 70,085  $\mu\text{g}/\text{kg}$  dry weight in sediment samples collected at locations near a production site in Aycliffe, United Kingdom two years after the facility was closed down (Ref. 44). Monitoring data do not provide a complete, quantitative determination of persistence because HBCD emission sources, rates, and quantities are typically unknown, and all environmental compartments are not considered. However, the monitoring data do provide evidence in support of environmental persistence. In addition, the widespread presence of HBCD in numerous terrestrial and aquatic species indicates persistence in the

environment sufficient for bioaccumulation to occur (Ref. 1).

#### IV. Rationale for Listing HBCD and Lowering the Reporting Threshold

##### A. What is EPA's rationale for listing the HBCD category?

HBCD has been shown to cause developmental effects at doses as low as 146.3 mg/kg/day (LOAEL) in male rats. Developmental effects have also been observed with a BMDL of 0.056 mg/kg/day (BMD of 0.18 mg/kg/day) based on effects in female rats and a BMDL of 0.46 mg/kg/day (BMD of 1.45 mg/kg/day) based on effects in male rats. HBCD also causes reproductive toxicity at doses as low 138 mg/kg/day (LOAEL) in female rats. Based on the available developmental and reproductive toxicity, EPA believes that HBCD can be reasonably anticipated to cause moderately high to high chronic toxicity in humans. Therefore, EPA believes that the evidence is sufficient for listing the HBCD category on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(B) based on the available developmental and reproductive toxicity data.

HBCD has been shown to be highly toxic to both aquatic and terrestrial species with acute aquatic toxicity values as low as 0.009 mg/L and chronic aquatic toxicity values as low as 0.0042 mg/L. HBCD is highly toxic to terrestrial species as well with observed toxic doses as low as 0.51 and 2.1 mg/kg/day. In addition to being highly toxic, HBCD is also bioaccumulative and persistent in the environment, which further supports a high concern for the toxicity to aquatic and terrestrial species. EPA believes that HBCD meets the EPCRA section 313(d)(2)(C) listing criteria on toxicity alone but also based on toxicity and bioaccumulation as well as toxicity and persistence in the environment. Therefore, EPA believes that the evidence is sufficient for listing the HBCD category on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(C) based on the available ecological toxicity data as well as the bioaccumulation and persistence data.

HBCD has the potential to cause developmental and reproductive toxicity at moderately low to low doses and is highly toxic to aquatic and terrestrial organisms; thus, EPA considers HBCD to have moderately high to high chronic human health toxicity and high ecological toxicity. EPA does not believe that it is appropriate to consider exposure for chemicals that are moderately high to highly toxic based on a hazard

assessment when determining if a chemical can be added for chronic human health effects pursuant to EPCRA section 313(d)(2)(B) (see 59 FR 61440–61442). EPA also does not believe that it is appropriate to consider exposure for chemicals that are highly toxic based on a hazard assessment when determining if a chemical can be added for environmental effects pursuant to EPCRA section 313(d)(2)(C) (see 59 FR 61440–61442). Therefore, in accordance with EPA's standard policy on the use of exposure assessments (See November 30, 1994 (59 FR 61432, FRL–4922–2), EPA does not believe that an exposure assessment is necessary or appropriate for determining whether HBCD meets the criteria of EPCRA section 313(d)(2)(B) or (C).

##### B. What is EPA's rationale for lowering the reporting threshold for HBCD?

EPA believes that the available bioaccumulation and persistence data for HBCD support a classification of HBCD as a PBT chemical. HBCD has been shown to be highly bioaccumulative in aquatic species and to also biomagnify in aquatic and terrestrial food chains. While there is limited data on the half-life of HBCD in soil and sediment, the best available data supports a determination that the half-life of HBCD in soil and sediment is at least 2 months. This determination is further supported by the data from environmental monitoring studies, which indicate that HBCD has significant persistence in the environment. The widespread presence of HBCD in numerous terrestrial and aquatic species also supports the conclusion that HBCD has significant persistence in the environment. Therefore, consistent with EPA's established policy for PBT chemicals (See 64 FR 58666, October 29, 1999) (FRL–6389–11) EPA is proposing to establish a 100-pound reporting threshold for the HBCD category.

#### V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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## VI. What are the Statutory and Executive Orders reviews associated with this action?

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

*B. Paperwork Reduction Act (PRA)*

This action does not contain any new information collection requirements that require additional approval by OMB under the PRA, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2025-0009 and 2050-0078. Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350-1), or EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350-2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. Since the HBCD category would be classified a PBT category, it is designated as a chemical of special concern, for which Form A reporting is not allowed. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322, 42 U.S.C. 11042, 40 CFR part 350.

OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2025-0009 (EPA Information Collection Request (ICR) No. 1363) and those related to trade secret designations under OMB Control 2050-0078 (EPA ICR No. 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection

of information unless it displays a currently valid OMB control number. The OMB control numbers relevant to EPA's regulations are listed in 40 CFR part 9 or 48 CFR chapter 15, and displayed on the information collection instruments (*e.g.*, forms, instructions).

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are small manufacturing facilities. The Agency has determined that of the 55 entities estimated to be impacted by this action, 42 are small businesses; no small governments or small organizations are expected to be affected by this action. All 42 small businesses affected by this action are estimated to incur annualized cost impacts of less than 1%. Thus, this action is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis (Ref. 2).

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action is not subject to the requirements of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not subject to the EPCRA section 313 reporting requirements. EPA's economic analysis indicates that the total cost of this action is estimated to be \$372,973 in the first year of reporting (Ref. 2).

*E. Executive Order 13132: Federalism*

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects

private sector facilities. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards and is therefore not subject to considerations under section 12(d) of NTTAA, 15 U.S.C. 272 note.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action does not address any human health or environmental risks and does not affect the level of protection provided to human health or the environment. This action adds an additional chemical to the EPCRA section 313 reporting requirements. By adding a chemical to the list of toxic chemicals subject to reporting under section 313 of EPCRA, EPA would be providing communities across the United States (including minority populations and low income populations) with access to data which they may use to seek lower exposures and consequently reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to

reduce any potential risks to human health and the environment. Therefore, the informational benefits of the action will have positive human health and environmental impacts on minority populations, low-income populations, and children.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: May 16, 2016. Gina McCarthy, Administrator. Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 372—[AMENDED]

- 1. The authority citation for part 372 continues to read as follows: Authority: 42 U.S.C. 11023 and 11048.
2. In § 372.28, amend the table in paragraph (a)(2) as follows:
a. Revise the heading for the second column, and

b. Alphabetically add the category "Hexabromocyclododecane (This category includes only those chemicals covered by the CAS numbers listed here)" and list "3194-55-6 (1,2,5,6,9,10-Hexabromocyclododecane)" and "25637-99-4 (Hexabromocyclododecane)"

The additions to read as follows:

§ 372.28 Lower thresholds for chemicals of special concern.

- (a) \* \* \*
(2) \* \* \*

Table with 2 columns: Category name, Reporting threshold (in pounds unless otherwise noted). Rows include Hexabromocyclododecane (This category includes only those chemicals covered by the CAS numbers listed here) with a threshold of 100.

3. In § 372.65, paragraph (c) is amended by adding alphabetically an entry for "Hexabromocyclododecane

(This category includes only those chemicals covered by the CAS numbers listed here)" to the table to read as follows:

§ 372.65 Chemicals and chemical categories to which this part applies.

- (c) \* \* \*

Table with 2 columns: Category name, Effective date. Rows include Hexabromocyclododecane (This category includes only those chemicals covered by the CAS numbers listed here) with an effective date of 1/1/17.

[FR Doc. 2016-12464 Filed 6-1-16; 8:45 am] BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150316270-5270-01]

RIN 0648-XE520

Fisheries Off West Coast States; Modifications of the West Coast Commercial Salmon Fisheries; Inseason Actions #1 Through #5

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

ACTION: Modification of fishing seasons; request for comments.

SUMMARY: NMFS announces five inseason actions in the ocean salmon fisheries. These inseason actions modified the commercial salmon fisheries in the area from Cape Falcon, OR to Point Arena, CA.

DATES: The effective dates for the inseason actions are set out in this document under the heading Inseason Actions. Comments will be accepted through June 17, 2016.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2016-0007, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0007, click the "Comment Now!" icon,

complete the required fields, and enter or attach your comments.

- Mail: William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA. 98115-6349.

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).

**FOR FURTHER INFORMATION CONTACT:**

Peggy Mundy at 206–526–4323.

**SUPPLEMENTARY INFORMATION:****Background**

In the 2015 annual management measures for ocean salmon fisheries (80 FR 25611, May 5, 2015), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, beginning May 1, 2015, and 2016 salmon fisheries opening earlier than May 1, 2016. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions). The state management agencies that participated in the consultations described in this document were: California Department of Fish and Wildlife (CDFW) and Oregon Department of Fish and Wildlife (ODFW).

Management of the salmon fisheries is generally divided into two geographic areas: north of Cape Falcon (U.S./Canada border to Cape Falcon, OR) and south of Cape Falcon (Cape Falcon, OR, to the U.S./Mexico border). The inseason actions reported in this document affected fisheries south of Cape Falcon. Within the south of Cape Falcon area, the Klamath Management Zone (KMZ) extends from Humbug Mountain, OR, to Humboldt South Jetty, CA, and is divided at the Oregon/California border into the Oregon KMZ to the north and California KMZ to the south. All times mentioned refer to Pacific daylight time.

**Inseason Actions***Inseason Action #1*

*Description of action:* Inseason action #1 modified the commercial salmon fishery from Cape Falcon to Humbug Mountain, previously scheduled to open March 15, 2016, to remain closed through March 31, 2016.

*Effective dates:* Inseason action #1 took effect on March 15, 2016, and remained in effect until superseded by inseason action #4 on April 1, 2016.

*Reason and authorization for the action:* The purpose of this action was to conserve fishery impacts on the

Klamath River fall Chinook stock (KRFC). The Council's Salmon Technical Team (STT) presented stock abundance forecasts for 2016. On the basis of these forecasts, the Regional Administrator (RA) determined that fisheries south of Cape Falcon will be constrained in 2016 to meet conservation objectives specified in the Pacific Coast Salmon Fishery Management Plan (FMP) for KRFC, as well as ESA consultation standards for California coastal Chinook for which KRFC is used as a proxy. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

*Consultation date and participants:* Consultation on inseason action #1 occurred on March 10, 2016. Participants in this consultation were staff from NMFS, CDFW, and ODFW. Council staff was unavailable to participate in the consultation, but was advised of the RA's decision after the consultation concluded.

*Inseason Action #2*

*Description of action:* Inseason action #2 modified the commercial salmon fishery from Humbug Mountain to the Oregon/California Border (Oregon KMZ), previously scheduled to open March 15, 2016, to remain closed through March 31, 2016.

*Effective dates:* Inseason action #2 took effect on March 15, 2016, and remained in effect until superseded by inseason action #4 on April 1, 2016.

*Reason and authorization for the action:* The purpose of this action was to conserve fishery impacts on the KRFC. The STT presented stock abundance forecasts for 2016. On the basis of these forecasts, the RA determined that fisheries south of Cape Falcon will be constrained in 2016 to meet conservation objectives specified in the FMP for KRFC, as well as ESA consultation standards for California coastal Chinook for which KRFC is used as a proxy. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

*Consultation date and participants:* Consultation on inseason action #2 occurred on March 10, 2016. Participants in this consultation were staff from NMFS, CDFW, and ODFW. Council staff was unavailable to participate in the consultation, but was advised of the RA's decision after the consultation concluded.

*Inseason Action #3*

*Description of action:* Inseason action #3 cancelled the commercial salmon fishery from Horse Mountain, CA to Point Arena, CA (Fort Bragg

management area), previously scheduled to open April 16–30.

*Effective dates:* Inseason action #3 took effect on April 16, 2016, and remained in effect through April 30, 2016.

*Reason and authorization for the action:* The purpose of this action was to conserve fishery impacts on the KRFC. The STT presented stock abundance forecasts for 2016. On the basis of these forecasts, the RA determined that fisheries south of Cape Falcon will be constrained in 2016 to meet conservation objectives specified in the FMP for KRFC, as well as ESA consultation standards for California coastal Chinook for which KRFC is used as a proxy. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

*Consultation date and participants:* Consultation on inseason action #3 occurred on March 10, 2016. Participants in this consultation were staff from NMFS, CDFW, and ODFW. Council staff was unavailable to participate in the consultation, but was advised of the RA's decision after the consultation concluded.

*Inseason Action #4*

*Description of action:* Inseason action #4 modified the commercial salmon fishery from Cape Falcon, OR, to Humbug Mountain, OR, to remain closed April 1–7, 2016, and open April 8–30, 2016. Seven days per week. All salmon except coho. Chinook minimum size limit of 28 inches total length. All vessels fishing in the area must land their fish in the state of Oregon. Gear restrictions same as in 2015.

*Effective dates:* Inseason action #4 superseded inseason action #1 on April 1, 2016, and remained in effect through April 30, 2016.

*Reason and authorization for the action:* The purpose of this action was to conserve fishery impacts on KRFC while allowing access to more abundant stocks. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

*Consultation date and participants:* Consultation on inseason action #4 occurred on March 13, 2016. Participants in this consultation were staff from NMFS, CDFW, and ODFW. Council staff was unavailable to participate in the consultation, but was advised of the RA's decision after the consultation concluded.

*Inseason Action #5*

*Description of action:* Inseason action #5 modified the commercial salmon fishery from Humbug Mountain, OR, to the Oregon/California Border (Oregon

KMZ), to remain closed April 1–7, 2016, and open April 8–30, 2016. Seven days per week. All salmon except coho. Chinook minimum size limit of 28 inches total length. All vessels fishing in the area must land their fish in the state of Oregon. Gear restrictions same as in 2015.

*Effective dates:* Inseason action #5 superseded inseason action #2 on April 1, 2016, and remained in effect through April 30, 2016.

*Reason and authorization for the action:* The purpose of this action was to conserve fishery impacts on KRFC while allowing access to more abundant stocks. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

*Consultation date and participants:* Consultation on inseason action #5 occurred on March 13, 2016. Participants in this consultation were staff from NMFS, CDFW, and ODFW. Council staff was unavailable to participate in the consultation, but was advised of the RA's decision after the consultation concluded.

All other restrictions and regulations remain in effect as announced for the 2015 ocean salmon fisheries and 2016 salmon fisheries opening prior to May 1, 2016 (80 FR 25611, May 5, 2015) and as modified by prior inseason actions.

The RA determined that the best available information indicated that

Chinook salmon abundance forecasts and expected fishery effort supported the above inseason actions recommended by the states of Oregon and California. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the time the action was effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

#### **Classification**

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (80 FR 25611, May 5, 2015), the FMP, and regulations implementing the FMP, 50 CFR 660.409 and 660.411.

Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook salmon catch and effort projections were developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information, ensuring that conservation objectives and ESA consultation standards are not exceeded. The AA also finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the FMP and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: May 27, 2016.

**Emily H. Menashes,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016–13035 Filed 6–1–16; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register

Vol. 81, No. 106

Thursday, June 2, 2016

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.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[Document No. AMS–SC–16–0027]

#### Notice of Request for Revision of a Currently Approved Information Collection

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request for an extension and revision of a currently approved information collection for Specialty Crops Market News Division. (This information collection was previously known as Fruit and Vegetable Market News Division. The Agency re-named the Division to Specialty Crops to more accurately reflect the range of commodities reported).

**DATES:** Comments must be received by August 1, 2016.

**ADDRESSES:** Interested persons are invited to submit written comments on the Internet at <http://www.regulations.gov> or to Specialty Crops Market News Division, AMS, USDA, 1400 Independence Avenue SW., Room 1529 South, Stop 0238, Washington, DC 20250–0238. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Contact Terry C. Long, Director; Specialty Crops Market News Division, (202) 720–2175, Fax: (202) 720–0011.

**SUPPLEMENTARY INFORMATION:**

*Title:* Specialty Crops Market News Division.

*OMB Number:* 0581–0006.

*Expiration Date of Approval:* December 31, 2016.

*Type of Request:* Revision of a currently approved information collection.

*Abstract:* Collection and dissemination of information for specialty crops production and to facilitate trading by providing a price base used by producers, wholesalers, and retailers to market product.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), section 203(g) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and to bring about a balance between production and utilization.

The specialty crops industry provides information on a voluntary basis that is gathered through confidential telephone and face-to-face interviews by market reporters. Reporters request supply, demand, and price information of over 330 fresh fruit, vegetable, nut, ornamental, and other specialty crops, such as honey. The information is collected, compiled, and disseminated by Specialty Crops Market News Division in its critical role as an impartial third party. It is collected and reported in a manner which protects the confidentiality of the respondent and their operations.

The Specialty Crops Market News Division reports are used by academia and various government agencies for regulatory and other purposes, but are primarily used by the specialty crops trade, which includes packers, processors, brokers, retailers, producers, and associated industries. Members of the specialty crops industry regularly make it clear that they need and expect the Department of Agriculture to issue price and supply market reports for commodities of regional, national and international significance in order to assist in making immediate production and marketing decisions and as a guide to the amount of product in the supply channel. In addition, the Agricultural Marketing Service buys hundreds of millions of dollars of specialty crops

products each year for domestic feeding programs, and Specialty Crops Market News Division data is a critical component of the decision making process.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .098 hours per response.

*Respondents:* Specialty crops industry, or other for-profit businesses, individuals or households, farms.

*Estimated Number of Respondents:* 4,359.

*Estimated Number of Responses per Respondent:* 197.

*Estimated Total Annual Burden on Respondents:* 84,155 hours.

*Comments are invited on:* (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, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

All 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.

Dated: May 27, 2016.

**Elanor Starmer,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2016–12987 Filed 6–1–16; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### Submission for OMB Review; Comment Request

May 26, 2016.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995,



Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding (1) whether the 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 burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA\_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by July 5, 2016. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Agricultural Marketing Service

*Title:* Almonds Grown in California (7 CFR part 981).

*OMB Control Number:* 0581–0242.

*Summary of Collection:* Marketing Order No. 981 (7 CFR part 981) regulates the handling of almonds grown in California and emanates from the Agricultural Marketing Agreement Act of 1937, (Act) Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674) to provide the respondents the type of service they request, and to administer the California almond marketing order program. The board has developed forms as a means for persons to file required information with the board relating to the treatment

of almonds to reduce the potential for Salmonella bacteria prior to shipment.

*Need and Use of the Information:* Almond handlers are required to submit annual treatment plans to the board and inspection agency to ensure such plans are complete and auditable regarding how they plan to treat their almonds to reduce the potential for Salmonella. The plan will be approved by the Board and must address specific parameters for the handler to ship almonds. The Board also gathers information from entities interested in being almond process authorities that validate technologies, to accept and further process untreated almonds and entities interested in being auditors. The information collected would be used only by authorized representatives of USDA, including the Agricultural Marketing Service, Fruit and Vegetable Programs' regional and headquarters' staff, and authorized employees and agents of the board.

*Description of Respondents:* Business or other for-profit; Individuals.

*Number of Respondents:* 175.

*Frequency of Responses:* Recordkeeping; Reporting: Annually; On occasion.

*Total Burden Hours:* 4,200.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2016–12991 Filed 6–1–16; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[Doc. No. AMS–LPS–16–0035]

#### Notice of Request for Extension of a Currently Approved Information Collection for the National Sheep Industry Improvement Center

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB) for an extension of a currently approved information collection 0581–0263: National Sheep Industry Improvement Center (NSIIC).

**DATES:** Comments must be received by August 1, 2016.

*Additional Information or Comments:* Interested persons are invited to submit comments concerning this information

collection document. Comments should be submitted online at [www.regulations.gov](http://www.regulations.gov). Comments received will be posted without change, including any personal information provided. All comments should reference docket number AMS–LPS–16–0035 and note the date of submission and the page number of this issue in the **Federal Register**. Comments may also be sent to Kenneth R. Payne, Director, Research and Promotion Division, Livestock, Poultry, and Seed Program, AMS, USDA, 1400 Independence Ave. SW., Room 2610–S, STOP 0249, Washington, DC 20250–0249; or by telephone (202) 720–5705 or fax: (202) 720–1125. Comments will be made available for public inspection at the above address during regular business hours or via the Web site at [www.regulations.gov](http://www.regulations.gov).

#### FOR FURTHER INFORMATION CONTACT:

Kenneth R. Payne, Research and Promotion Division, Livestock, Poultry, and Seed Program, AMS, USDA; 1400 Independence Ave. SW., Room 2610–S, STOP 0249, Washington, DC 20250–0249; or by telephone to (202) 720–5705 or fax to (202) 720–1125.

#### SUPPLEMENTARY INFORMATION:

*Title:* National Sheep Industry Improvement Center.

*OMB Number:* 0581–0263.

*Expiration Date of Approval:* September 30, 2016.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The information collection requirements in this request are essential to carry out the intent of the NSIIC. The NSIIC was initially authorized under the Consolidated Farm and Rural Development Act (Act), whose primary objective was to assist the U.S. sheep industry by strengthening and enhancing the production and marketing of sheep and their products in the United States. The information collection requirements in the request are essential to carry out the intent of the enabling legislation. The Act, as amended, was passed as part of the 1996 Farm Bill (Pub. L. 104–127, 110 Stat. 888). The initial legislation included a provision that privatized the NSIIC 10 years after its ratification or once the full appropriation of \$50 million was disbursed. Subsequently, the NSIIC was privatized on September 30, 2006, and the NSIIC's office was closed in early 2007.

In 2008, the NSIIC was re-established under Title XI of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), also known as the 2008 Farm Bill. The 2008 Farm Bill

repealed the requirement in section 375(e)(6) of the Act to privatize the NSIIC. Additionally, the 2008 Farm Bill provided for \$1 million in mandatory funding for fiscal year 2008 from the Commodity Credit Corporation for the NSIIC to remain available until expended. NSIIC has expended the \$1 million authorized under the 2008 Farm Bill.

On October 7, 2014, as provided under the Agricultural Act of 2014 (Pub. L. 113-79), also known as the 2014 Farm Bill, NSIIC was awarded \$1.475 million under the Sheep Production and Marketing Grant Program.

Currently, NSIIC awards funds annually to organizations designed to strengthen and enhance the production and marketing of sheep and sheep products in the United States including the improvement of infrastructure business, resource development, and the development of innovative approaches to solve long-term needs.

AMS accepts nominations for membership on the NSIIC Board of Directors (Board) from national organizations that (1) consist primarily of active sheep or goat producers in the United States, and (2) have the primary interest of sheep or goat production in the United States.

The forms used in this collection are: Nominations for Appointments; AD-755 Background Information Form (OMB No. 0505-0001); and Nominee's Agreement to Serve.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.21 hour per response.

*Respondents:* National organizations submitting nominations to the Board who (1) consist primarily of active sheep or goat producers in the United States, and (2) have the primary interest of sheep or goat production in the United States.

*Estimated Number of Respondents:* 10.

*Estimated Number of Responses per Respondent:* 1 per year per form.

*Estimated Total Annual Responses:* 30.

*Estimated Total Annual Burden:* 6.25 hours.

Comments are invited on: (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 including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be

collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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

Dated: May 27, 2016.

**Elanor Starmer,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2016-13019 Filed 6-1-16; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### Information Collection; Online Registration for FSA-Hosted Events and Conferences

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on an extension with a revision of the information collection associated with online registration for FSA-hosted events and conferences. The information collection is needed for FSA to obtain information from the respondents who register on the Internet to make payment and reservations to attend any FSA-hosted conferences and events.

**DATES:** We will consider comments that we receive by August 1, 2016.

**ADDRESSES:** We invite you to submit comments on the notice. In your comments, include date, OMB control number, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Farm Service Agency, USDA, Stakeholder Engagement Specialist, Shayla Watson, 1400 Independence Avenue, Mail Stop 0539, SW., Washington, DC 20250.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be obtained

from Shayla Watson at the above address.

**FOR FURTHER INFORMATION CONTACT:** Shayla Watson; (202) 690-2350. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

#### SUPPLEMENTARY INFORMATION:

##### Description of Information Collection

*Title:* Online Registration for FSA-hosted Events and Conferences.

*OMB Number:* 0560-0226.

*Expiration Date of Approval:* August 31, 2016.

*Type of Request:* Extension with a Revision.

*Abstract:* The collection of information is necessary for people to register online to make payment and reservations to attend conferences and events. They can register on FSA's Online Registration site on the Internet. Respondents who do not have access to the Internet can register by mail or fax. The information is collected by the FSA employees who host the conferences and events. FSA is collecting common elements from interested respondents such as name, organization, address, country, phone number, email address, State, city or town, payment options (credit card, check), special accommodations requests and how the respondent learned of the conference. The information collection element also include race, ethnicity, gender and veteran status. The respondents are mainly individuals who will attend the FSA-hosted conferences or events. The information is used to collect payment, if applicable, from the respondents and make hotel reservations and other special arrangements as necessary. There are no changes to the burden hours since the last OMB approval. FSA is adding new elements in the online registration format to assist individuals and to gather information to provide an appropriate FSA-hosted conference and events. The new elements include: Specifying a request for a type of disability services, identifying how they learned about the event, providing additional names to invite to the event, waiver for liability, and demographic information including gender, race, and ethnicity. The new elements will not increase the burden hours because it is all self-explanatory for the respondent to complete the online format.

The formula used to calculate the total burden hour is estimated average time per responses hours times total responses.

*Estimate of Annual Burden:* 15 minutes.

*Type of Respondents:* Individuals.  
*Estimated Number of Respondents:* 900.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Number of Responses:* 900.

*Estimated Average Time per Responses:* 0.25.

*Estimated Total Annual Burden on Respondents:* 225 hours.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(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.

All responses to this notice, including name and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Val Dolcini,**

*Administrator, Farm Service Agency.*

[FR Doc. 2016-12947 Filed 6-1-16; 8:45 am]

**BILLING CODE 3410-05-P**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

#### Submission for OMB Review; Comment Request

May 26, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding (1) whether the 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 burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the

information to be collected; (4) ways to 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.

Comments regarding this information collection received by July 5, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA\_Submission@omb.eop.gov* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### National Agricultural Statistics Service

*Title:* Vegetable Surveys.

*OMB Control Number:* 0535-0037.

*Summary of Collection:* The primary function of the National Agricultural Statistics (NASS) is to prepare and issue current official state and national estimates of crop and livestock production, prices and disposition. The Vegetable Surveys Program obtains basic agricultural statistics for fresh market and processing vegetables in major producing States. The vegetable program has two types of utilization: Some crops are processing only, some are fresh market only, and others are dual crops (both processing and fresh market). Vegetable processors are surveyed in August for acreage contracted and estimated yield. In late November, processors are asked for final acreage harvested, production, and value. The fresh market vegetable program consists of specialized growers who are surveyed at the conclusion of the growing season for estimates of crop production. Producers of onions, strawberries, and asparagus are surveyed in August to obtain forecasted acreage and production. NASS will collect information using surveys.

*Need and Use of the Information:* NASS will collect information to estimate acreage intended to plant, acreage planted, acreage harvested, yield/production, price, and utilization for the various crops. The estimates provide vital statistics for growers, processors, and marketers to use in making production and marketing decisions.

*Description of Respondents:* Farms; Business or other for-profit.

*Number of Respondents:* 19,000.

*Frequency of Responses:* Reporting: Annually; Other (seasonally).

*Total Burden Hours:* 5,838.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2016-12989 Filed 6-1-16; 8:45 am]

**BILLING CODE 3410-20-P**

## DEPARTMENT OF AGRICULTURE

### Rural Business Cooperative Service

#### Submission for OMB Review; Comment Request

May 26, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding (1) whether the 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 burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

Comments regarding this information collection received by July 5, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street, NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA\_Submission@OMB.EOP.GOV* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail

Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Rural Business Service

*Title:* 7 CFR 4287–B, Servicing Business and Industry Guaranteed Loans.

*OMB Control Number:* 0570–0016.

*Summary of Collection:* The Business and Industry (B&I) program was legislated in 1972 under Section 310B of the Consolidated Farm and Rural Development Act, as amended (the Act). The purpose of the B&I program, as authorized by the Act, is to improve economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through bolstering the existing private credit structure through the guaranteeing of quality loans, which will provide lasting community benefits. The B&I program is administered by the Rural Business Service (RBS) through Rural Development State and sub-State offices serving each State. RBS will collect information using various forms from the lender and the borrower. This information is vital for making prudent financial decisions.

*Need and Use of the Information:* RBS will collect information to monitor the guaranteed loan portfolio to ensure that the lenders are adequately servicing the loans. RBS through its respective Business Programs Divisions in Washington, DC and its 47 State Offices throughout the United States will be the primary users of the information collected. If the information is not collected, RBS would not be able to make prudent credit decisions nor would the Agency be able to effectively monitor the lender's servicing activities and thus minimize losses under the program.

*Description of Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 4,126.

*Frequency of Responses:* Reporting: On occasion; Quarterly; Annually.

*Total Burden Hours:* 25,997.

#### Rural Business Service

*Title:* 7 CFR 4279–B, Guaranteed Loan Making—Business and Industry Loans.

*OMB Control Number:* 0570–0017.

*Summary of Collection:* The Business and Industry (B&I) program was legislated in 1972 under Section 310B of the Consolidated Farm and Rural Development Act, as amended. The purpose of the program is to improve, develop, or finance businesses, industries, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved through bolstering the existing private credit structure through the guaranteeing of quality loans made by lending institutions, thereby providing lasting community benefits. The B&I program is administered by the Rural Business Service (RBS) through Rural Development State and sub-State offices serving each State.

*Need and Use of the Information:* RBS will collect information needed by the Agency including completed forms, financial statements and various other documents used by the lender, borrower and Agency to determine program eligibility and creditworthiness of the loan proposal. The information is used by RBS loan officers and approved officials to determine program eligibility and for program monitoring.

*Description of Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 450.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 14,730.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2016–12988 Filed 6–1–16; 8:45 am]

**BILLING CODE 3410–XY–P**

#### DEPARTMENT OF COMMERCE

##### Foreign-Trade Zones Board

[S–75–2016]

##### Foreign-Trade Zone 154—Baton Rouge, Louisiana; Application for Subzone; Westlake Chemical Corporation; Geismar, Louisiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Baton Rouge Port Commission, grantee of FTZ 154, requesting subzone status for the facility of Westlake Chemical Corporation located in Geismar, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade

Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on May 25, 2016.

The proposed subzone (185 acres) is located at 36045 Highway 30 in Geismar and would include four pipelines totaling 4.9 miles in length. The proposed subzone would be subject to the existing activation limit of FTZ 154. No authorization for production activity has been requested at this time.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 12, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 27, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz). For further information, contact Camille Evans at [Camille.Evans@trade.gov](mailto:Camille.Evans@trade.gov) or (202) 482–2350.

Dated: May 25, 2016.

**Andrew McGilvray,**  
*Executive Secretary.*

[FR Doc. 2016–12961 Filed 6–1–16; 8:45 am]

**BILLING CODE 3510–DS–P**

#### DEPARTMENT OF COMMERCE

##### Foreign-Trade Zones Board

[B–38–2016]

##### Foreign-Trade Zone 87—Lake Charles, Louisiana; Application for Subzone; Westlake Chemical Corporation; Sulphur, Louisiana

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Lake Charles Harbor & Terminal District, grantee of FTZ 87, requesting subzone status for the facilities of Westlake Chemical Corporation located in Sulphur, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u),

and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on May 25, 2016.

The proposed subzone would consist of the following sites: *Site 1* (583.88 acres)—Petro Operations, 900 Highway 108, Sulphur; *Site 2* (70.83 acres)—Poly Operations, 3525 Cities Services Highway, Sulphur; and, *Site 3* (691.78 acres)—Marine Terminal Operations, 1820 PAK Tank Road, Sulphur. The proposed subzone would also include several pipelines. No authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 12, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 27, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz). For further information, contact Camille Evans at [Camille.Evans@trade.gov](mailto:Camille.Evans@trade.gov) or (202) 482-2350.

Dated: May 25, 2016.

**Andrew McGilvray,**  
*Executive Secretary.*

[FR Doc. 2016-12958 Filed 6-1-16; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[S-8-2016]

#### Approval of Subzone Status; Thoma-Sea Marine Constructors, L.L.C.; Houma and Lockport, Louisiana

On January 28, 2016, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Houma-Terrebonne Airport Commission, grantee of FTZ 279, requesting subzone status subject to the existing activation limit of FTZ 279 on behalf of Thoma-Sea Marine Constructors, L.L.C., in Houma and Lockport, Louisiana.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (81 FR 5707, February 3, 2016). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 279A is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 279's 2,000-acre activation limit.

Dated: May 25, 2016.

**Andrew McGilvray,**  
*Executive Secretary.*

[FR Doc. 2016-12960 Filed 6-1-16; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-37-2016]

#### Foreign-Trade Zone 261—Alexandria, Louisiana; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the England Economic & Industrial Development District, grantee of FTZ 261, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on May 25, 2016.

FTZ 261 was approved by the FTZ Board on April 21, 2004 (Board Order 1325, 69 FR 26066, May 11, 2004). The current zone includes the following sites: *Site 1* (1,594 acres)—England Airpark complex, 1611 Arnold Drive, Alexandria; *Site 2* (124 acres)—Port of Alexandria, 600 Port Road, Alexandria; and, *Site 3* (110 acres)—Central Louisiana Eco Business Park, 7636 Highway 1 South, Alexandria.

The grantee's proposed service area under the ASF would be Rapides Parish,

Louisiana, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The application indicates that the proposed service area is adjacent to the Morgan City Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone to include existing Sites 1 and 2 as "magnet" sites. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The applicant is also requesting to remove Site 3 from the zone. No subzones/usage-driven sites are being requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is August 1, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 16, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz). For further information, contact Camille Evans at [Camille.Evans@trade.gov](mailto:Camille.Evans@trade.gov) or (202) 482-2350.

Dated: May 25, 2016.

**Andrew McGilvray,**  
*Executive Secretary.*

[FR Doc. 2016-12954 Filed 6-1-16; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[C-583-857]

**Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From Taiwan: Final Negative Countervailing Duty Determination**

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

**SUMMARY:** The Department of Commerce (the Department) determines that countervailable subsidies are not being provided to producers and exporters of certain corrosion-resistant steel products (corrosion-resistant steel) from Taiwan.

**DATES:** *Effective Date:* June 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Joy Zhang or Cindy Robinson, Office III, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1168 and (202) 482-3797, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Petitioners in this investigation are the United States Steel Corporation, Nucor Corporation, Steel Dynamics Inc., California Steel Industries, ArcelorMittal USA LLC, and AK Steel Corporation. This investigation covers 26 alleged government subsidy programs. The mandatory respondents

in this investigation are (1) Prosperity Tieh Enterprise Co., Ltd. (PT), and its crossed-owned affiliates: Hong-Ye Steel Co., Ltd. (HY), Prosperity Did Enterprise Co., Ltd. (PD), and Chan Lin Enterprise Co., Ltd. (CL) (collectively the Prosperity Companies) and (2) Yieh Phui Enterprise Co., Ltd. (Yieh Phui), and its crossed-owned affiliates: Yieh Corporation Limited (YCL); Shin Yang Steel Co., Ltd. (Shin Yang); and Synn Industrial Co., Ltd (Synn) (collectively the Yieh Phui Companies).

On November 6, 2015, the Department published its *Preliminary Determination*.<sup>1</sup> For a description of the events that have occurred since the *Preliminary Determination*, see the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

**Period of Investigation**

The period of investigation for which we are measuring subsidies is January 1, 2014, through December 31, 2014.

**Scope Comments**

In accordance with the Preliminary Scope Determination,<sup>2</sup> the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted on the record of this final determination, and accompanying discussion and analysis of all comments timely received, see the Final Scope Decision Memorandum.<sup>3</sup>

**Scope of the Investigation**

The products covered by this investigation are corrosion-resistant steel products from Taiwan. For a complete description of the scope of the investigation, see Appendix II.

**Analysis of Subsidy Programs and Comments Received**

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Issues and Decision Memorandum, dated concurrently with this notice.<sup>4</sup> A list of subsidy programs and the issues that parties raised, and to which we responded in the Decision Memorandum, is attached to this notice as Appendix I.

We determine the total estimated net countervailable subsidy rates to be:

Producer/Exporter	Subsidy rate
Prosperity Tieh Enterprise Co., Ltd. (PT); Hong-Ye Steel Co., Ltd. (HY); Prosperity Did Enterprise Co., Ltd. (PD); and Chan Lin Enterprise Co., Ltd. (CL) (collectively Prosperity Companies).	0.00 percent <i>ad valorem</i> .
Yieh Phui Enterprise Co., Ltd. (Yieh Phui); Yieh Corporation Limited (YCL); Shin Yang Steel Co., Ltd. (Shin Yang); and Synn Industrial Co., Ltd (Synn) (collectively Yieh Phui Companies).	0.00 percent <i>ad valorem</i> .

Because the total estimated net countervailable subsidy rates are zero, we determine that countervailable subsidies are not being provided to producers or exporters of corrosion-resistant steel from Taiwan. We have not calculated an all-others rate pursuant to sections 705(c)(1)(B) and (c)(5) of the Tariff Act of 1930, as amended (the Act) because we have not

reached an affirmative final determination. Because our final determination is negative, this proceeding is terminated in accordance with section 705(c)(2) of the Act.

In the *Preliminary Determination*, the total net countervailable subsidy rates for the individually examined respondents were zero and, therefore, we did not suspend liquidation of

entries of corrosion-resistant steel from Taiwan.<sup>5</sup> Because the estimated subsidy rates for both examined companies are zero in this final determination, we are not directing U.S. Customs and Border Protection to suspend liquidation of entries of corrosion-resistant steel from Taiwan.

<sup>1</sup> See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan: Preliminary Negative Countervailing Duty Determination*, 80 FR 68852 (November 6, 2015) (*Preliminary Determination*).

<sup>2</sup> See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Corrosion-Resistant Steel Products From the

People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 21, 2015 (*Preliminary Scope Decision Memorandum*). See also Memorandum to the File, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum," dated January 29, 2016.

<sup>3</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

<sup>4</sup> See Issue and Decision Memorandum.

<sup>5</sup> See *Preliminary Determination*, 80 FR 68852.

## United States International Trade Commission (USITC) Notification

In accordance with section 705(d) of the Act, we will notify the USITC of our final determination. Because our final determination is negative, this investigation is terminated.

### Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 24, 2016.

### Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

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### Appendix II—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (“IF”)) steels and high strength low alloy (“HSLA”) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (“AHSS”) and Ultra High Strength Steels (“UHSS”), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
  - Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
  - Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers:

7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090,



7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016-12977 Filed 6-1-16; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482-4735.

#### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (“the Act”), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (“the Department”) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

#### Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and

Border Protection (“CBP”) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (“APO”) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department finds that determinations concerning whether particular companies should be “collapsed” (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if

companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

#### Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after June 2016, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its “Opportunity to Request Administrative Review” notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

*Opportunity to Request a Review:* Not later than the last day of June 2016,<sup>1</sup> interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

<sup>1</sup> Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.



	Period of review
<b>Antidumping Duty Proceedings</b>	
Japan: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe, A-588-850 (Over 4½ Inches) .....	6/1/15-5/31/16
Japan: Carbon and Alloy Seamless Standard, Line and Pressure Pipe, A-588-851 (Under 4½ Inches) .....	6/1/15-5/31/16
Mexico: Prestressed Concrete Steel Rail Tie Wire, A-201-843 .....	6/1/15-5/31/16
Spain: Chlorinated Isocyanurates, A-469-814 .....	6/1/15-5/31/16
Taiwan: Helical Spring Lock Washers, A-583-820 .....	6/1/15-5/31/16
The People's Republic of China: Artist Canvas, A-570-899 .....	6/1/15-5/31/16
The People's Republic of China: Chlorinated Isocyanurates, A-570-898 .....	6/1/15-5/31/16
The People's Republic of China: Furfuryl Alcohol, A-570-835 .....	6/1/15-5/31/16
The People's Republic of China: High Pressure Steel Cylinders, A-570-977 .....	6/1/15-5/31/16
The People's Republic of China: Polyester Staple Fiber, A-570-905 .....	6/1/15-5/31/16
The People's Republic of China: Prestressed Concrete Steel Rail Tie Wire, A-570-990 .....	6/1/15-5/31/16
The People's Republic of China: Prestressed Concrete Steel Wire Strand, A-570-945 .....	6/1/15-5/31/16
The People's Republic of China: Silicon Metal, A-570-806 .....	6/1/15-5/31/16
The People's Republic of China: Tapered Roller Bearings, A-570-601 .....	6/1/15-5/31/16
<b>Countervailing Duty Proceedings</b>	
The People's Republic of China: High Pressure Steel Cylinders, C-570-978 .....	1/1/15-12/31/15

**Suspension Agreements**

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review,

in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011) the Department clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.<sup>2</sup>

Further, as explained in *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013), the Department clarified its practice with regard to the conditional review of the non-market economy (NME) entity in administrative reviews of antidumping duty orders. The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.<sup>3</sup> In

<sup>2</sup> See also the Enforcement and Compliance Web site at <http://trade.gov/enforcement/>.

<sup>3</sup> In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of

administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

Following initiation of an antidumping administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS") on Enforcement and Compliance's ACCESS Web site at <http://access.trade.gov>.<sup>4</sup> Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served

entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

<sup>4</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of “Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation” for requests received by the last day of June 2016. If the Department does not receive, by the last day of June 2016, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures “gap” period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 24, 2016.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2016-12953 Filed 6-1-16; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-580-878]

#### **Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances**

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

**SUMMARY:** The Department of Commerce (“the Department”) determines that certain corrosion-resistant steel products (“corrosion-resistant steel”) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 735(a) of the Tariff Act of 1930, as amended

(“the Act”). The period of investigation (“POI”) is April 1, 2014, through March 31, 2015. The final estimated weighted-average dumping margins are listed below in the “Final Determination” section of this notice.

**DATES:** *Effective Date:* June 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elfi Blum or Lingjun Wang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-0197 or (202) 482-2316, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Department published the preliminary determination on January 4, 2016.<sup>1</sup> A summary of the events that occurred since the Department published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Final Issues and Decision Memorandum.<sup>2</sup>

Also, as explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its authority to toll all administrative deadlines due to the recent closure of the Federal Government.<sup>3</sup> As a consequence, all deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now May 24, 2016.

##### **Scope of the Investigation**

The product covered by this investigation is corrosion-resistant steel from the Republic of Korea. For a complete description of the scope of this investigation, see the “Scope of the

<sup>1</sup> See *Certain Corrosion-Resistant Steel Products From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 78 (January 4, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Issues and Decision Memorandum for the Final Affirmative Determination in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from the People’s Republic of China,” (Final Issues and Decision Memorandum), dated concurrently with this determination and hereby adopted by this notice.

<sup>3</sup> See Memorandum to the File from Ron Lorentzen, Acting A/S for Enforcement & Compliance, “Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas” dated January 27, 2016.

Investigation,” in Appendix II of this notice.

##### **Scope Comments**

In accordance with the Preliminary Scope Determination,<sup>4</sup> the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted on the record of this final determination, and accompanying discussion and analysis of all comments timely received, see the Final Scope Decision Memorandum.<sup>5</sup> The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

##### **Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Final Issues and Decision Memorandum, which is hereby adopted by this notice.<sup>6</sup> A list of the issues raised is attached to this notice as Appendix I. The Final Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (“ACCESS”). ACCESS is available to registered users at <https://access.trade.gov> and it is available to all parties in the Central Records Unit, Room B-8024 of the main Department of Commerce building. In addition, a complete version of the Final Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Final Issues and Decision Memorandum are identical in content.

##### **Verification**

As provided in section 782(i) of the Act, in January, February, and April 2016, the Department verified the sales

<sup>4</sup> See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Corrosion-Resistant Steel Products From the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated December 21, 2015 (“Preliminary Scope Decision Memorandum”). See also Memorandum to the File, “Certain Corrosion-Resistant Steel Products From the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum,” dated January 29, 2016.

<sup>5</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Scope Comments Decision Memorandum for the Final Determinations,” dated concurrently with this notice.

<sup>6</sup> See Final Issues and Decision Memorandum.

and cost data reported by the mandatory respondents Hyundai Steel Company (Hyundai) and Dongkuk Steel Mill Co., Ltd./Union Steel Manufacturing Co., Ltd. (Dongkuk/Union Steel), pursuant to section 782(i) of the Act. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by respondents.

**Changes to the Margin Calculations Since the Preliminary Determination**

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for Hyundai and Dongkuk/Union Steel. For a discussion of these changes, see the Final Issues and Decision Memorandum. We have also revised the all-others rate.

**Final Affirmative Determination of Critical Circumstances, in Part**

Prior to the *Preliminary Determination*, the Department found

that critical circumstances exist with respect to imports of corrosion-resistant steel from Korea produced or exported by Hyundai and “all-others.”<sup>7</sup> As discussed in the Final Issues and Decision Memorandum, we no longer find critical circumstances with respect to Hyundai. We continue to find that critical circumstances exist with respect to “all-others” companies.<sup>8</sup> Thus, in accordance with section 735(a)(3) of the Act, we find that critical circumstances exist with respect to imports produced or exported by all other producers/exporters, but do not exist for Hyundai and Dongkuk/Union Steel.

**All-Others Rate**

Consistent with sections 735(c)(1)(B)(i)(II) and 735(c)(5) of the Act, the Department also calculated an estimated all-others rate. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average

dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Where the rates for investigated companies are zero or *de minimis*, or based entirely on facts otherwise available, section 735(c)(5)(B) of the Act instructs the Department to establish an “all others” rate using “any reasonable method.”

In this investigation, we calculated weighted-average dumping margins for Hyundai and Dongkuk/Union, that are above *de minimis* and which are not based on total facts available. We calculated the all-others rate using a simple average of the dumping margins calculated for the mandatory respondents.<sup>9</sup>

**Final Determination Margins**

The Department determines that the following estimated weighted-average dumping margins exist:

Exporter/manufacturer	Weighted-average dumping margins (percent)	Cash deposit rate (percent)
Dongkuk Steel Mill Co., Ltd./Union Steel Manufacturing Co., Ltd. ....	8.75	8.75
Hyundai Steel Company .....	47.80	47.79
All Others <sup>10</sup> .....	28.28	28.27

**Disclosure**

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

**Continuation of Suspension of Liquidation**

Pursuant to section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of corrosion-resistant steel from Korea, which were entered, or withdrawn from warehouse, for consumption on or after October 6, 2015 (for those entities for which we found critical circumstances exist) or on or

after January 4, 2016, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination* (for all entities for which we did not find critical circumstances exist). Because we find in this final determination that critical circumstances do not exist for Hyundai, we will terminate the retroactive suspension of liquidation ordered at the *Preliminary Determination* and release any cash deposits that were required during that period, consistent with section 735(c)(3) of the Act.

As noted above, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require a cash deposit less the amount of the countervailing duty determined to constitute any export subsidies.

Therefore, in the event that a countervailing duty order is issued and suspension of liquidation is resumed in the companion countervailing duty investigation on corrosion-resistant steel from the Korea, the Department will instruct CBP to require cash deposits adjusted by the amount of export subsidies, as appropriate. These adjustments are reflected in the final column of the rate chart, above. Until such suspension of liquidation is resumed in the companion countervailing duty investigation, and so long as suspension of liquidation continues under this antidumping duty investigation, the cash deposit rates for this antidumping duty investigation will be the rates identified in the weighted-average margin column in the rate chart, above.

<sup>7</sup> See *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015).

<sup>8</sup> For a full description of the methodology and results of our analysis, see the Final Issues and Decision Memorandum.

<sup>9</sup> With two respondents, we would normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company’s publicly-ranged values for the merchandise under consideration. We would compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other

companies. See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data was unavailable, we based the all-others rate on a simple average of the two calculated margins.

<sup>10</sup> See Footnote 9.

## International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of corrosion-resistant steel from Korea no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

## Notification Regarding Administrative Protective Orders (“APO”)

This notice serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: May 24, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I—List of Topics Discussed in the Final Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of the Investigation
- V. Changes Since the Preliminary Determination
- VI. Use of Adverse Facts Available
- VII. Discussion of the Issues

Comment 1: Whether Critical Circumstances Exist for Hyundai and for POSCO, as Part of “all other producers/exporters”

Comment 2: Whether the Department Should Exclude Hyundai’s Sales of

TWBs and Auto Parts Pursuant to Section 772(e) of the Act

Comment 3: Whether the Department Erred in Applying Facts Otherwise Available and Surreptitiously Used an Adverse Inference With Respect to its Sales of TWBs and Auto Parts in the Preliminary Determination

Comment 4: Whether the FMG Data Submitted by Hyundai for its Sales of TWBs, Auto Parts, Sheet, Skelp and Blanks Should Be Used in the Final Determination

Comment 5: Whether the Department Should Apply Adverse Facts Available to Calculate the Final Dumping Margin for Hyundai

Comment 6: Whether the Department Should Adjust Hyundai’s G&A Expenses for Subject Merchandise

Comment 7: Whether the Department Should Adjust Hyundai’s Costs to Account for Non-Prime Merchandise

Comment 8: Whether the Department Should Adjust Ocean Freight Expenses to Reflect Arm’s Length

Comment 9: The Department Should Disallow Certain Billing Adjustments for Home Market and U.S. Sales

Comment 10: Whether the Department’s Adjustment to Marine Insurance is Unwarranted

Comment 11: Whether the Department Should Adjust HSA’s Indirect Spelling Expense Ratio

Comment 12: Whether the Department Failed to Deduct Further Manufacturing Resulting in Overstating CEP Profit

Comment 13: Use of the Average-to-Transaction Method With Zeroing

Comment 14: Whether the Major Input Rule Analysis Should Be Conducted

Comment 15: Whether Application of AFA Is Warranted With Regard to Home Market Sales and Production Cost of Processed CORE

Comment 16: Whether to Recalculate Home Market Credit Expense

Comment 17: Whether to Adjust Inland Freight in Korea for U.S. Sales

Comment 18: Whether to Adjust Inland Freight in Korea for Home Market Sales

Comment 19: Whether Application of AFA Is Warranted With Regard to U.S. Warranty Expenses

Comment 20: Whether the Application of AFA Is Warranted for Dongkuk’s Failure to Report Home Market Sales by an Affiliate

Comment 21: Application of the Average-to-Transaction Method to all U.S. Sales  
VIII. Recommendation

## Appendix II—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally

oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (“IF”)) steels and high strength low alloy (“HSLA”) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (“AHSS”) and Ultra High Strength Steels (“UHSS”), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–12979 Filed 6–1–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–970]

#### Multilayered Wood Flooring From the People’s Republic of China: Preliminary Rescission of 2013–2014 Antidumping Duty New Shipper Review

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

**SUMMARY:** The Department of Commerce (“the Department”) is conducting a new shipper review (“NSR”) of the antidumping duty order on multilayered wood flooring (“MLWF”) from the People’s Republic of China (“PRC”). The NSR covers one exporter and producer of subject merchandise, Qingdao Barry Flooring Co., Ltd (“Qingdao Barry”). The period of review (“POR”) is December 1, 2013 through November 30, 2014. The Department preliminarily determines that Qingdao Barry’s sale to the United States is not *bona fide*, as required by section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (“the Act”).<sup>1</sup> Therefore, we are preliminarily rescinding this NSR. Interested parties are invited to comment on the preliminary results of this review.

**DATES:** Effective June 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Maisha Cryor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5831.

#### SUPPLEMENTARY INFORMATION:

#### Background

On October 26, 2015, the Department published a notice of initiation of a new shipper review of the antidumping duty order on MLWF from the PRC.<sup>2</sup> The Department subsequently issued an antidumping duty questionnaire, and supplemental questionnaires, to Qingdao Barry and received timely

<sup>1</sup> On February 24, 2016, the President of the United States signed into law the Trade Facilitation and Trade Enforcement Act of 2015, Public Law 114–125 (Feb. 24, 2016), which made amendments to section 751(a)(2)(B) of the Act. These amendments apply to this determination.

<sup>2</sup> See *Multilayered Wood Flooring From the People’s Republic of China: Initiation of Antidumping Duty New Shipper Review*, 80 FR 65200 (October 26, 2015) (“*Initiation Notice*”). In that notice, we explained that the review was being initiated in accordance with an order entered by the U.S. Court of International Trade, wherein the Court authorized the Department to initiate and conduct this new shipper review based on Qingdao Barry’s December 19, 2014, review request.

responses thereto. Also, Qingdao Barry submitted comments on surrogate country and surrogate value selection.<sup>3</sup> No other party submitted comments. The Department extended the deadline for issuing the preliminary results of this review until May 20, 2016.<sup>4</sup>

#### Scope of the Order

The merchandise covered by the order is multilayered wood flooring, which is composed of an assembly of two or more layers or plies of wood veneers<sup>5</sup> in combination with a core.<sup>6</sup>

Merchandise covered by this review is classifiable under subheadings

4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111;

<sup>3</sup> See “Multilayered Wood Flooring from the People’s Republic of China: Submission of Comparable Surrogate Country Comments,” dated February 16, 2016; see also “Multilayered Wood Flooring from the People’s Republic of China: Submission of Surrogate Value Information,” dated February 23, 2016.

<sup>4</sup> See the memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Maisha Cryor, Office IV, Antidumping and Countervailing Duty Operations, entitled, “Multilayered Wood Flooring from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Review” dated April 14, 2016.

<sup>5</sup> A “veneer” is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

<sup>6</sup> For a complete description of the scope of the order, see Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled “Preliminary Rescission of the 2013–2014 Antidumping Duty New Shipper Review: Multilayered Wood Flooring from the People’s Republic of China” issued concurrently with and hereby adopted by this notice (“Preliminary Decision Memorandum”).

4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

#### Methodology

The Department is conducting this review in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (“ACCESS”). ACCESS is available to registered users at <http://access.trade.gov> and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at <http://www.trade.gov/enforcement/>. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

#### Preliminary Rescission of the Antidumping New Shipper Review of Qingdao Barry

As discussed in the *Bona Fide Sales Analysis Memorandum*,<sup>7</sup> the Department preliminarily finds that the sale made by Qingdao Barry to the

United States is not a *bona fide* sale. The Department reached this conclusion based on the totality of circumstances surrounding the reported sale, including, among other things, the price of the sale and Qingdao Barry’s failure to provide evidence that the subject merchandise was resold at a profit. Because the non-*bona fide* sale was the only reported sale of subject merchandise during the POR, and thus there are no reviewable transactions on this record, we are preliminarily rescinding the instant NSR. Because much of the factual information used in our analysis of Qingdao Barry’s sale involves business proprietary information, a full discussion of the basis for our preliminary determination is set forth in the *Bona Fide Sales Analysis Memorandum*, which is on the record of this proceeding.

#### Public Comment

Interested parties may submit case briefs no later than 14 days after the date of publication of the preliminary results of review.<sup>8</sup> Rebuttals to case briefs may be filed no later than five days after the briefs are filed.<sup>9</sup> All rebuttal comments must be limited to comments raised in the case briefs.<sup>10</sup>

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement & Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.<sup>11</sup> Requests should contain the party’s name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral argument presentations will be limited to issues raised in the briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined.<sup>12</sup> Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department’s electronic records system, ACCESS, by 5 p.m. Eastern Time (“ET”) on the due date. Documents excepted from the electronic submission requirements

must be filed manually (*i.e.*, in paper form) with the APO/Dockets Unit in Room 18022, and stamped with the date and time of receipt by 5 p.m. ET on the due date.<sup>13</sup>

The Department intends to issue the final results of this NSR, which will include the results of its analysis of issues raised in any briefs received, no later than 90 days after the date these preliminary results of review are issued pursuant to section 751(a)(2)(B)(iii) of the Act.

#### Assessment Rates

If the Department proceeds to a final rescission of Qingdao Barry’s NSR, the assessment rate to which Qingdao Barry’s shipments will be subject will remain unchanged. However, the Department initiated an administrative review of the antidumping duty order on MLWF from the PRC covering numerous exporters, including Qingdao Barry, and the period December 1, 2013 through November 30, 2014, which encompasses the POR of this NSR.<sup>14</sup> Thus, if the Department proceeds to a final rescission, we will instruct U.S. Customs and Border Protection (“CBP”) to continue to suspend entries during the period December 1, 2013, through November 30, 2014 of subject merchandise exported by Qingdao Barry until CBP receives instructions relating to the administrative review of this order covering the period December 1, 2013 through November 30, 2014.

If the Department does not proceed to a final rescission of this new shipper review, pursuant to 19 CFR 351.212(b)(1), we will calculate an importer-specific (or customer) assessment rate based on the final results of this review. However, pursuant to the Department’s refinement to its assessment practice in NME cases, for entries that were not reported in the U.S. sales database submitted by Qingdao Barry, the Department will instruct CBP to liquidate such entries at the PRC-wide rate.<sup>15</sup>

#### Cash Deposit Requirements

Effective upon publication of the final rescission or the final results of this NSR, the Department will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash

<sup>13</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

<sup>14</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 6041, 6044–45 (February 4, 2015).

<sup>15</sup> For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

<sup>7</sup> See Memorandum from Maisha Cryor, Office IV AD/CVD Operations, to Abdelali Elouaradia, Director, Enforcement and Compliance, Office IV entitled “Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People’s Republic of China: Preliminary *Bona Fide* Sale Analysis for Qingdao Barry Flooring Co., Ltd., dated concurrently with and hereby adopted by this notice (“*Bona Fide* Sales Analysis Memorandum”).

<sup>8</sup> Note that the Department is altering the time limit for the submission of case briefs. See 19 CFR 351.309(c)(1)(ii).

<sup>9</sup> See 19 CFR 351.309(d)(1).

<sup>10</sup> See 19 CFR 351.309(d)(2).

<sup>11</sup> See 19 CFR 351.310(c).

<sup>12</sup> See 19 CFR 351.310(d).

deposit for entries of subject merchandise by Qingdao Barry. If the Department proceeds to a final rescission of this new shipper review, the cash deposit rate will continue to be the PRC-wide rate for Qingdao Barry because the Department will not have determined an individual margin of dumping for Qingdao Barry. If the Department issues final results for this new shipper review, the Department will instruct CBP to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

#### Notification to Importers

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

We are issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: May 24, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

#### Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

1. Scope
2. Bona Fide Sales Analysis

[FR Doc. 2016-12951 Filed 6-1-16; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-027]

#### Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part

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

**SUMMARY:** The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain corrosion-resistant steel products (corrosion-resistant steel) from

the People's Republic of China (the PRC) as provided in section 705 of the Tariff Act of 1930, as amended (the Act). For information on the estimated subsidy rates, see the "Final Determination" section of this notice. The period of investigation is January 1, 2014, through December 31, 2014.

**DATES:** *Effective Date:* June 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Emily Halle or David Lindgren, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-0176 or (202) 482-3870, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department published the *Preliminary Determination* on November 6, 2015.<sup>1</sup> A summary of the events that occurred since the Department published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Final Decision Memorandum.<sup>2</sup> The Final Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed Final Decision Memorandum and the electronic version are identical in content.

##### Period of Investigation

The period of investigation for which we are measuring subsidies is January 1, 2014, through December 31, 2014.

##### Scope Comments

In accordance with the Preliminary Scope Determination,<sup>3</sup> the Department

<sup>1</sup> See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Preliminary Affirmative Determination*, 80 FR 68843 (November 6, 2015) (*Preliminary Determination*).

<sup>2</sup> See Memorandum, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China," (Final Decision Memorandum), dated concurrently with this determination and hereby adopted by this notice.

<sup>3</sup> See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and

set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, see the Final Scope Decision Memorandum.<sup>4</sup> The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

##### Scope of the Investigation

The product covered by this investigation is corrosion-resistant steel from the PRC. For a complete description of the scope of this investigation, see the "Scope of the Investigation," in Appendix II of this notice.

##### Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Final Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Final Decision Memorandum, is attached to this notice at Appendix I.

##### Use of Adverse Facts Available

The Department, in making these findings, relied, in part, on facts available and, because one or more respondents failed to cooperate by not acting to the best of their ability, we made adverse inferences.<sup>5</sup> For the final determination, we are basing the countervailing duty (CVD) rates for Angang Group Hong Kong Company Ltd. (Angang), Baoshan Iron & Steel Co., Ltd. (Baoshan), Duferco S.A. (Duferco), Changshu Everbright Material Technology (Everbright), and Handan Iron & Steel Group (Handan) on facts otherwise available, pursuant to sections 776(a)(2)(A) and (C) of the

Countervailing Duty Operations, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 21, 2015 (Preliminary Scope Decision Memorandum). See also Memorandum to the File, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum," January 29, 2016.

<sup>4</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

<sup>5</sup> See sections 776(a) and (b) of the Act.



Tariff Act of 1930, as amended (the Act). Further, because Angang, Baoshan, Duferco, Everbright and Handan did not cooperate to the best of their ability in this investigation, we also determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. For further information, see the section “Use of Facts Otherwise Available and Adverse Inferences,” in the Final Decision Memorandum.

### Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to the respondents’ subsidy rate calculations since the *Preliminary Determination*. For a discussion of these changes, see the Final Decision Memorandum and the Final Analysis Memorandum.<sup>6</sup>

### Final Affirmative Determination of Critical Circumstances, in Part

Prior to the *Preliminary Determination*, the Department found that critical circumstances exist with respect to imports of corrosion-resistant steel from the PRC for Angang, Baoshan, Duferco, Everbright and Handan.<sup>7</sup> Upon further analysis of the data and comments submitted by interested parties following the *Preliminary Determination*, we are not modifying our findings for the *Final Determination*.<sup>8</sup> Specifically, in accordance with section 705(a)(2) of the Act, we find that critical circumstances exist with respect to imports from Angang, Baoshan, Duferco, Everbright and Handan, but do not exist for Yieh Phui (China) Technomaterial Co., Ltd. (YPC) and all other producers or exporters.

### Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we established rates for YPC (the only individually investigated exporter/producer of the subject merchandise that participated in this investigation), and for Angang, Baoshan, Duferco,

Everbright and Handan (which were assigned a rate based on adverse facts available (AFA)).

In accordance with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A)(i) of the Act, for companies not individually investigated, we apply an “all-others” rate, which is normally calculated by weight averaging the subsidy rates of the individual companies selected for individual examination with those companies’ export sales of the subject merchandise to the United States, excluding any zero and *de minimis* rates calculated for the exporters and producers individually investigated, and any rates determined entirely under section 776 of the Act. Consistent with section 705(c)(5)(A)(i) of the Act, we therefore have excluded the AFA rate assigned to Angang, Baoshan, Duferco, Everbright, and Handan from the all-others rate.

Because the only individually calculated rate that is not zero, *de minimis*, or based on facts otherwise available is the rate calculated for YPC, in accordance with section 705(c)(5)(A)(i) of the Act, the rate calculated for YPC is assigned as the “all-others” rate. The estimated countervailable subsidy rates are summarized in the table below.

Company	Subsidy rate (percent)
Yieh Phui (China) Technomaterial Co., Ltd .....	39.05
Angang Group Hong Kong Company Ltd .....	241.07
Baoshan Iron & Steel Co., Ltd ...	241.07
Duferco S.A., Hebei Iron & Steel Group, and Tangshan Iron and Steel Group Co., Ltd .....	241.07
Changshu Everbright Material Technology .....	241.07
Handan Iron & Steel Group .....	241.07
All-Others .....	39.05

### Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to sections 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from the PRC that were entered or withdrawn from warehouse, for consumption, on or after August 8, 2015 (for those entities for which we found critical circumstances exist) or on or after November 6, 2015, the date of publication of the *Preliminary Determination* in the **Federal Register** (for all entities for which we did not find critical circumstances exist). In accordance with section 703(d) of the

Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after March 4, 2016, but to continue the suspension of liquidation of all entries from August 8, 2015, or November 6, 2015, as the case may be, through March 3, 2016.

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

### Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice serves as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

<sup>6</sup> See Final Decision Memorandum; see also Memorandum, “Final Determination Analysis for Yieh Phui (China) Technomaterial Co., Ltd.,” dated concurrently with this determination and hereby adopted by this notice.

<sup>7</sup> See *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015).

<sup>8</sup> For a full description of the methodology and results of our analysis, see the Final Decision Memorandum.



Dated: May 24, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I

### List of Topics Discussed in the Final Decision Memorandum

- I. Summary
- II. Background
- III. Final Determination of Critical Circumstances, in Part
- IV. Scope of the Investigation
- V. Application of the Countervailing Duty Law to Imports From the PRC
- VI. Subsidies Valuation Information
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- VIII. Use of Facts Otherwise Available and Adverse Inferences
- IX. Analysis of Programs
- X. Analysis of Comments
  - Comment 1: Whether Respondent's Producers of Inputs Are "Authorities"
  - Comment 2: Whether Inputs for LTAR Are Specific
  - Comment 3: Whether To Use a Tier One Benchmark To Determine the Adequacy of Remuneration for Inputs for LTAR
  - Comment 4: Whether the Provision of Electricity for LTAR Is Countervailable
  - Comment 5: Whether the GOC Provided Policy Loans to YPC During the POI
  - Comment 6: Whether the Export Buyer's Credit Program Was Used by Respondent
  - Comment 7: Correcting VAT in the Hot-Rolled Steel and Primary Aluminum Benchmarks
  - Comment 8: Whether To Apply AFA to YCL's Sales From Other PRC Producers of Corrosion-Resistant Steel
- XI. Recommendation

## Appendix II

### Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For

purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels and high strength low alloy ("HSLA") steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels ("AHSS") and Ultra High Strength Steels ("UHSS"), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin free steel"), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and

- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers:

7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016-12962 Filed 6-1-16; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-580-879]

#### Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part

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

**SUMMARY:** The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain corrosion-resistant steel products (corrosion-resistant steel) from the Republic of Korea (Korea) as provided in section 705 of the Tariff Act of 1930, as amended (the Act). For

information on the estimated subsidy rates, see the “Final Determination” section of this notice. The period of investigation is January 1, 2014, through December 31, 2014.

**DATES:** *Effective Date:* June 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Myrna Lobo or Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2371 or (202) 482–1396, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department published the *Preliminary Determination* on November 6, 2015.<sup>1</sup> A summary of the events that occurred since the Department published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Final Decision Memorandum.<sup>2</sup> The Final Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed Final Decision Memorandum and the electronic version are identical in content.

**Scope Comments**

In accordance with the Preliminary Scope Determination,<sup>3</sup> the Department

set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, see the Final Scope Decision Memorandum.<sup>4</sup> The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

**Scope of the Investigation**

The product covered by this investigation is corrosion-resistant steel from the Korea. For a complete description of the scope of this investigation, see the “Scope of the Investigation,” in Appendix II of this notice.

**Analysis of Subsidy Programs and Comments Received**

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Final Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Final Decision Memorandum, is attached to this notice at Appendix I.

**Changes Since the Preliminary Determination**

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to the respondents’ subsidy rate calculations since the *Preliminary Determination*. For a discussion of these changes, see the Final Decision Memorandum.<sup>5</sup>

**Final Affirmative Determination of Critical Circumstances, in Part**

Prior to the *Preliminary Determination*, the Department preliminarily found that critical circumstances exist with respect to imports of corrosion-resistant steel from Korea for all other companies, excepting mandatory respondents Union Steel Manufacturing Co. Ltd./Dongkuk Steel Mill Co., Ltd. (Union/Dongkuk) and Dongbu Steel Co., Ltd./Dongbu Incheon

Steel Co., Ltd. (Dongbu).<sup>6</sup> Upon further analysis of the data following the *Preliminary Determination*, we are not modifying our findings for the *Final Determination*.<sup>7</sup> Specifically, in accordance with section 705(a)(2) of the Act, we continue to find that critical circumstances exist with respect imports from all other producers or exporters, but do not exist for Union/Dongkuk and Dongbu.

**Final Determination**

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for Union/Dongkuk and Dongbu, the two exporters/producers of subject merchandise selected for individual examination in this investigation.

In accordance with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an “all-others” rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as respondents with those companies’ export sales of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all-others rate should exclude zero and *de minimis* rates calculated for the exporters and producers individually investigated, and any rates determined entirely under section 776 of the Act. We therefore have excluded the rate for Union/Dongkuk from the all-others rate.

Because the only individually calculated rate that is not zero, *de minimis*, or based on facts otherwise available is the rate calculated for Dongbu, in accordance with section 705(c)(5)(A)(i) of the Act, the rate calculated for Dongbu is assigned as the “all-others” rate. The estimated countervailable subsidy rates are as follows:

Company	Subsidy rate
Union Steel Manufacturing Co. Ltd./Dongkuk Steel Mill Co., Ltd.	0.72 percent ( <i>de minimis</i> ).

<sup>6</sup> See *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015). Dongbu Incheon Steel Co., Ltd. (Dongbu Incheon) is not listed in this notice; however, we preliminarily determined that Dongbu Incheon is a wholly-owned subsidiary of Dongbu Steel Co., Ltd. and calculated a single countervailing duty rate for both companies. Thus, we stated that the suspension of liquidation for both companies would begin on the date of publication of the *Preliminary Determination*. See *Preliminary Determination*, 80 FR at 68842.

<sup>7</sup> For a full description of the methodology and results of our analysis, see the Final Decision Memorandum.

<sup>1</sup> See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Affirmative Determination*, 80 FR 68842 (November 6, 2015) (*Preliminary Determination*).

<sup>2</sup> See Memorandum, “Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea,” (Final Decision Memorandum), dated concurrently with this determination and hereby adopted by this notice.

<sup>3</sup> See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Corrosion-Resistant Steel Products From the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated December 21, 2015 (*Preliminary Scope Decision Memorandum*). See also Memorandum to the File, “Certain Corrosion-Resistant Steel Products From the People’s Republic of China, India, Italy, the Republic of Korea, and

Taiwan: Correction to Preliminary Determination Scope Memorandum,” January 29, 2016.

<sup>4</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Scope Comments Decision Memorandum for the Final Determinations,” dated concurrently with this notice.

<sup>5</sup> See Final Decision Memorandum.

Company	Subsidy rate
Dongbu Steel Co., Ltd./ Dongbu Incheon Steel Co., Ltd.	1.19 percent.
All-Others .....	1.19 percent.

### Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from Korea, other than subject merchandise produced/exported by Union/Dongkuk which received a *de minimis* countervailable subsidy rate in the *Preliminary*.

### Determination

Pursuant to section 703(d) of the Act, we subsequently instructed CBP to suspend liquidation of all entries of merchandise under consideration from Korea, with the exception of Union/Dongkuk, that were entered or withdrawn from warehouse, for consumption, on or after August 8, 2015 (for those entities for which we found critical circumstances exist) or on or after November 6, 2015, the date of publication of the *Preliminary Determination* in the **Federal Register** (for those entities for which we did not find critical circumstances exist). In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after March 4, 2016, but to continue the suspension of liquidation of all entries from August 8, 2015, or November 6, 2015, as the case may be, through March 3, 2016.

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above that are not *de minimis*. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-

privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

### Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 24, 2016.

### Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

### Appendix I—List of Topics Discussed in the Final Decision Memorandum

- I. Summary
- II. Background
- III. Final Determination of Critical Circumstances, in Part
- IV. Scope of the Investigation
- V. Subsidies Valuation Information
- VI. Benchmarks and Discount Rates
- VII. Analysis of Programs
- VIII. Analysis of Comments

Comment 1: Whether the Department Should Find the Provision of Electricity for Less Than Adequate Remuneration (LTAR) Countervailable Based on Adverse Facts Available

Comment 2: Whether the Provision of Electricity Provides a Benefit

Comment 3: Whether the Department Should Use Other Submitted Data to Measure the Adequacy of Remuneration for Electricity

Comment 4: Whether Benefits Received From Dongbu's Voluntary Debt Restructuring are Countervailable

Comment 5: Whether Benefits Should Be Calculated for Loans and Bonds Which Were Issued to Dongbu by GOK-Owned Banks Prior to Its Voluntary Restructuring

Comment 6: Whether Dongbu was Creditworthy in 2014 and Whether the Department Should Recalculate Benefits Using Creditworthy Benchmarks

Comment 7: Whether Nonghyup Bank is an "Authority" and Loans Received From Nonghyup Bank are Countervailable

Comment 8: Whether the Department Should Find That the Provision of Natural Gas for LTAR is Countervailable

IX. Recommendation

### Appendix II—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or

- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (“IF”)) steels and high strength low alloy (“HSLA”) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (“AHSS”) and Ultra High Strength Steels (“UHSS”), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090,

7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–12978 Filed 6–1–16; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–583–856]

#### Certain Corrosion-Resistant Steel Products From Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part

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

**SUMMARY:** The Department of Commerce (“Department”) determines that certain corrosion-resistant steel products (“corrosion-resistant steel”) from Taiwan are being, or are likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 735(a) of the Tariff Act of 1930, as amended (“the Act”). The period of investigation (“POI”) is April 1, 2014, through March 31, 2015. The final dumping margins of sales at LTFV are listed below in the “Final Determination” section of this notice.

**DATES:** *Effective Date:* June 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Shanah Lee or Paul Stolz, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6386 or (202) 482–4474, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On January 4, 2016, the Department published the *Preliminary Determination* of this antidumping duty (“AD”) investigation and invited parties to comment.<sup>1</sup> As provided in section 782(i) of the Act, in January and April

<sup>1</sup> See *Certain Corrosion-Resistant Steel Products from Taiwan: Negative Preliminary Determination of Sales at Less Than Fair Value*, 81 FR 72 (January 4, 2016) (“*Preliminary Determination*”). See also *Antidumping Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Notice of Correction to Preliminary Antidumping Determinations*, 81 FR 6236 (February 5, 2016) (“*Scope Correction Notice*”).

2016, the Department verified the sales and cost data reported by Prosperity Tieh Enterprise Co., Ltd. (“PT”), Yieh Phui Enterprise Co., Ltd. (“YP”), and Synn Industrial Co., Ltd. (“Synn”). In April 2016, Petitioner,<sup>2</sup> YP, and PT submitted case briefs and rebuttal briefs. For a complete discussion of the events that occurred since the *Preliminary Determination*, see the Issues and Decision Memorandum.<sup>3</sup>

Also, as explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its authority to toll all administrative deadlines due to the recent closure of the Federal Government.<sup>4</sup> As a consequence, all deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now May 24, 2016.

#### Scope of the Investigation

The product covered by this investigation is corrosion-resistant steel from Taiwan. For a complete description of the scope of this investigation, see the “Scope of the Investigation,” in Appendix II of this notice.

#### Scope Comments

In accordance with the *Preliminary Scope Determination*,<sup>5</sup> the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal

<sup>2</sup> Petitioners are United States Steel Corporation, Nucor Corporation, ArcelorMittal USA, AK Steel Corporation, Steel Dynamics, Inc., and California Steel Industries, Inc. AK Steel Corporation was the only Petitioner to file comments in this case.

<sup>3</sup> See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan,” dated concurrently with this notice (“*Issues and Decision Memorandum*”).

<sup>4</sup> See Memorandum to the File from Ron Lorentzen, Acting A/S for Enforcement & Compliance, “Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas” dated January 27, 2016.

<sup>5</sup> See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Corrosion-Resistant Steel Products From the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated December 21, 2015 (“*Preliminary Scope Decision Memorandum*”). See also Memorandum to the File, “Certain Corrosion-Resistant Steel Products From the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum,” dated January 29, 2016.

responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, see the Final Scope Decision Memorandum.<sup>6</sup> The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, which is incorporated by reference and hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at <https://access.trade.gov> and it is available to all parties in the Central Records Unit, room B-8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

**Changes Since the Preliminary Determination**

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations. For a discussion of these changes, see the Issues and Decision Memorandum. We have also revised the all-others rate.

**Final Determination of Affiliation and Collapsing**

We continue to find that YP and Synn are affiliated pursuant to section 771(33)(E) of the Act and should be collapsed together and treated as a single company, pursuant to the criteria laid out in 19 CFR 351.401(f).<sup>7</sup> Additionally, for these final results, we have determined that PT is also affiliated with Synn, pursuant to section

<sup>6</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

<sup>7</sup> See *Preliminary Determination*, 81 FR at 73 and Memorandum to Erin Begnal, Director, Office III, "Less Than Fair Value Investigation of Certain Corrosion-Resistant Steel Products from Taiwan: Preliminary Affiliation and Collapsing Memorandum for Yieh Phui Enterprise Co., Ltd.," dated December 21, 2015. See also Issues and Decision Memorandum at Comment 3.

771(33)(E) of the Act<sup>8</sup> and the three companies should be collapsed together and treated as a single company (collectively, "PT/YP/Synn"), pursuant to the criteria laid out in 19 CFR 351.401(f).<sup>9</sup>

**All-Others Rate**

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins, and margins determined entirely under section 776 of the Act. In this case, we found the mandatory respondents to be collapsed as a single company, PT/YP/Synn, whose margin is calculated from its own sales and production data and which is not zero or *de minimis* or based entirely on facts available. Therefore, we are assigning PT/YP/Synn's calculated margin as the all-others rate in accordance with section 735(c)(5)(A) of the Act.

**Final Determination**

The Department determines that the final weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (percent)
Prosperity Tieh Enterprise Co., Ltd., Yieh Phui Enterprise Co., Ltd., and Synn Industrial Co., Ltd. (collectively, "PT/YP/Synn")	3.77
All-Others	3.77

**Disclosure**

We intend to disclose the calculations performed within five days of the publication of this notice to interested parties, in accordance with 19 CFR 351.224(b).

**Final Affirmative Determination of Critical Circumstances, in Part**

On October 29, 2015, the Department found that critical circumstances do not exist for merchandise exported by PT and YP, but do exist for "all others."<sup>10</sup>

<sup>8</sup> We have also determined that PT and YP are affiliated under section 771(33)(A) of the Act.

<sup>9</sup> See Memorandum to Eric Greynolds, Acting Director, Office III, "Less Than Fair Value Investigation of Certain Corrosion-Resistant Steel Products from Taiwan: Final Affiliation and Collapsing Memorandum," dated concurrently with this notice. See also Issues and Decision Memorandum at Comment 3.

<sup>10</sup> See *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China,*

Based on the final sales data submitted by PT/YP/Synn and further analysis following the *Preliminary Critical Circumstances Determination*, we are not modifying our findings for the final determination.<sup>11</sup> We continue to find that critical circumstances do not exist for PT/YP/Synn, but that critical circumstances do exist for the "all others." For a complete discussion of this issue, see the "Final Determination of Critical Circumstances, In Part" section of the Issues and Decision Memorandum.

**Suspension of Liquidation**

In accordance with section 735(c)(1)(B) and (C) of the Act, the Department will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of corrosion-resistant steel from Taiwan, as described in Appendix II of this notice, which were entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final determination. Because of our affirmative determination of critical circumstances for "all others," in accordance with section 735(a)(3) and (c)(4)(C) of the Act, suspension of liquidation of corrosion-resistant steel from Taiwan, as described in the "Scope of the Investigation" section, shall apply, for "all others," to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice, the date suspension of liquidation is first ordered for "all others."

Further, CBP shall require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price, as follows: (1) For the exporters/producers listed in the table above, the cash deposit rates will be equal to the dumping margin which the Department determined in this final determination;<sup>12</sup> (2) if the exporter is

*the Republic of Korea, and Taiwan: Preliminary Determination of Critical Circumstances*, 80 FR 68504, (November 5, 2015) ("*Preliminary Critical Circumstances Determination*").

<sup>11</sup> As explained in the Issues and Decision Memorandum, however, YP did not report sales for December 2015. We have used the highest total reported export figure for a single month for YP and PT as adverse facts available for December 2015. Even with this adverse facts assumption, we still find that PT/YP/Synn, which are collapsed together, did not have massive imports in the comparison period.

<sup>12</sup> Because the Department is making a negative determination in the companion countervailing duty ("CVD") investigation of corrosion-resistant steel from Taiwan, we are not adjusting the cash deposit rate for export subsidies given that there will be no cash deposit rates collected in the companion CVD investigation. See section 772(c)(1)(C) of the Act.

not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 3.77 percent. These instructions suspending liquidation will remain in effect until further notice.

### ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of corrosion-resistant steel from Taiwan no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

### Notification Regarding Administrative Protective Orders (“APO”)

This notice serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: May 24, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Final Determination of Critical Circumstances, in Part
- V. List of Comments
- VI. Discussion of the Issues

Comment 1: Whether To Apply AFA to

PT’s and Synn’s Misclassified Sales

Comment 2: Whether To Disregard YP/ Synn’s Home-Market Rebates

Comment 3: Whether To Continue to Collapse YP and Synn for the Final Determination and Whether to Also Collapse YP/Synn with PT

Comment 4: Whether To Adjust YP’s Coil Costs

Comment 5: Whether To Offset YP’s G&A Expenses for Insurance Proceeds

Comment 6: Whether To Offset PT’s G&A Expense Ratio by Including Additional Non-operating Income Items

### VII. Recommendation

### Attachment II—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or

- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (“IF”)) steels and high strength low alloy (“HSLA”) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (“AHSS”) and Ultra High Strength Steels (“UHSS”), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000,

7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016-12975 Filed 6-1-16; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews**

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

**Background**

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), the Department of Commerce (“the Department”) and the International Trade Commission

automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

**Upcoming Sunset Reviews for July 2016**

The following Sunset Reviews are scheduled for initiation in July 2016 and will appear in that month’s Notice of Initiation of Five-Year Sunset Review (“Sunset Review”).

		Department contact
<b>Antidumping Duty Proceedings</b>		
Stainless Steel Plate in Coils from Belgium (A-423-808) (3rd Review) .....		Jacqueline Arrowsmith, (202) 482-5255.
Heavy Forged Hand Tools, With or Without Handles from China (A-570-803) (3rd Review) .....		Matthew Renkey, (202) 482-2312.
Stainless Steel Sheet and Strip in Coils from Japan (A-588-845) (3rd Review) .....		David Goldberger, (202) 482-4136.
Stainless Steel Sheet and Strip in Coils from the Republic of Korea (A-580-834) (3rd Review) .....		David Goldberger, (202) 482-4136.
Ammonium Nitrate from Russia (A-821-811) (3rd Review) .....		David Goldberger, (202) 482-4136.
Stainless Steel Plate in Coils from South Africa (A-791-805) (3rd Review) .....		Jacqueline Arrowsmith, (202) 482-5255.
Stainless Steel Plate in Coils from Taiwan (A-583-830) (3rd Review) .....		Jacqueline Arrowsmith, (202) 482-5255.
Stainless Steel Sheet and Strip in Coils from Taiwan (A-583-831) (3rd Review) .....		David Goldberger, (202) 482-4136.
<b>Countervailing Duty Proceedings</b>		
Stainless Steel Sheet and Strip in Coils from the Republic of Korea (C-580-835) (3rd Review) .....		David Goldberger, (202) 482-4136.
Stainless Steel Plate in Coils from South Africa (C-791-806) (3rd Review) .....		David Goldberger, (202) 482-4136.
<b>Suspended Investigations</b>		
No Sunset Review of suspended investigations is scheduled for initiation in July 2016.		

The Department’s procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The Notice of Initiation of Five-Year (“Sunset”) Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 24, 2016.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2016-12952 Filed 6-1-16; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-026]

**Certain Corrosion-Resistant Steel Products From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part**

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

**SUMMARY:** The Department of Commerce (the Department) determines that imports of certain corrosion-resistant steel products (corrosion-resistant steel)

from the People’s Republic of China (PRC) are being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final weighted-average dumping margins of sales at LTFV are listed in the “Final Determination Margins” section of this notice. The period of investigation is October 1, 2014, through March 31, 2015.

**DATED:** *Effective Date:* June 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Nancy Decker or Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-0196 or (202) 482-4261, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department published the *Preliminary Determination* on January 4,



2016.<sup>1</sup> A summary of the events that occurred since the Department published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Final Decision Memorandum.<sup>2</sup> The Final Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed Final Decision Memorandum and the electronic version are identical in content.

### Scope of the Investigation

The product covered by this investigation is corrosion-resistant steel from the PRC. For a complete description of the scope of this investigation, see the "Scope of the Investigation," in Appendix II of this notice.

### Scope Comments

In accordance with the Preliminary Scope Determination,<sup>3</sup> the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal

<sup>1</sup> See *Certain Corrosion-Resistant Steel Products From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China," (Final Decision Memorandum), dated concurrently with this determination and hereby adopted by this notice.

<sup>3</sup> See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 21, 2015 ("Preliminary Scope Decision Memorandum"). See also Memorandum to the File, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum," dated January 29, 2016.

responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, see the Final Scope Decision Memorandum.<sup>4</sup> The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Final Decision Memorandum accompanying this notice. A list of the issues raised and to which the Department responded is attached to this notice as Appendix I.

### Verification

As provided in section 782(i) of the Act, in January 2016, the Department verified the sales and cost data reported by the mandatory respondent Yieh Phui (China) Technomaterial Co., Ltd. (Yieh Phui), pursuant to section 782(i) of the Act. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by respondents.

### Changes to the Margin Calculations Since the Preliminary Determination

Based on the Department's analysis of the comments received and our findings at verification, we made certain changes to our margin calculations. For a discussion of these changes, see the Final Decision Memorandum.<sup>5</sup>

### Combination Rates

As stated in the *Initiation Notice*,<sup>6</sup> the Department calculated combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.<sup>7</sup>

### Final Affirmative Determination of Critical Circumstances, in Part

Prior to the *Preliminary Determination*, the Department found

<sup>4</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

<sup>5</sup> See *Final Decision Memorandum*.

<sup>6</sup> See *Certain Corrosion-Resistant Steel Products From Italy, India, the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 37228 (June 30, 2015) (*Initiation Notice*).

<sup>7</sup> See Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries," (April 5, 2005) (Policy Bulletin 05.1), available on the Department's Web site at <http://enforcement.trade.gov/policy/bull05-1.pdf>.

that critical circumstances exist with respect to imports of corrosion-resistant steel from the PRC produced or exported by the PRC-wide entity (which, as noted below, includes Hebei Iron & Steel Co., Ltd. (Tangshan Branch) (Tangshan) and Baoshan Iron & Steel Co., Ltd. (Baoshan)).<sup>8</sup> We are not modifying our findings for this final determination.<sup>9</sup> Thus, pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h)(1)-(2), we find that critical circumstances exist with respect to subject merchandise produced or exported by the PRC-wide entity, but do not exist for Yieh Phui and the other producers/exporters entitled to a separate rate.

### Separate Rate

Under section 735(c)(5)(A) of the Act, the rate for all other companies that have not been individually examined is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely on the basis of facts available. In this final determination, we calculated a weighted-average dumping margin for Yieh Phui (the only cooperating mandatory respondent) which is not zero, *de minimis*, or based entirely on facts available. Accordingly, we determine to use Yieh Phui's weighted-average dumping margin as the margin for the separate rate companies.

### PRC-Wide Rate

In our *Preliminary Determination*, we found that the PRC-wide entity, which includes Baoshan, Tangshan, and other PRC exporters and/or producers that did not respond to the Department's requests for information, failed to provide necessary information, withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. As a result, we preliminarily determined to calculate the PRC-wide rate on the basis of adverse facts available (AFA). We examined whether the highest petition margin was less than or equal to the

<sup>8</sup> See *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015).

<sup>9</sup> For a full description of the methodology and results of our analysis, see the Final Decision Memorandum.



highest calculated margin, and determined that the highest calculated margin of 255.80 percent was the higher of the two. Thus, for the *Preliminary Determination*, we assigned to the PRC-wide entity a dumping margin of 255.80 percent, the highest calculated margin. This rate was Yieh Phui's preliminary calculated margin. For this final determination, Yieh Phui's calculated margin changed to 209.97 percent, and it is still the highest calculated margin.

Consistent with our practice, the Department selected Yieh Phui's highest calculated margin, as AFA, because this rate is higher than the highest petition rate in this investigation and therefore, sufficiently adverse to serve the purposes of facts available.<sup>10</sup> Therefore, we assigned this rate to the PRC-wide entity for this final determination. Furthermore, there is no need to corroborate the selected margin because it is based on information submitted by

Yieh Phui in the course of this investigation, *i.e.*, it is not secondary information.<sup>11</sup>

**Final Determination Margins**

The Department determines that the following weighted-average dumping margins, and cash deposit rates reflecting adjustments to the weighted-average dumping margins to account for export subsidies exist:

Exporter	Producer	Weighted-average dumping margin (percent)	Cash deposit rate (percent) <sup>12</sup>
Yieh Phui (China) Technomaterial Co., Ltd. ....	Yieh Phui (China) Technomaterial Co., Ltd. ....	209.97	199.43
Jiangyin Zongcheng Steel Co. Ltd. ....	Jiangyin Zongcheng Steel Co. Ltd. ....	209.97	199.43
Union Steel China .....	Union Steel China .....	209.97	199.43
PRC-Wide Entity .....	209.97 .....	.....	199.43

As detailed in the Preliminary Decision Memorandum, Baoshan and Tangshan, mandatory respondents in this investigation, did not respond to our questionnaire and, thus, did not demonstrate that they were entitled to separate rates. We continue to find these companies to be part of the PRC-Wide Entity. Furthermore, because we did not receive quantity and value questionnaire responses or separate rate applications from numerous companies, the PRC-wide entity also includes these non-responsive companies.<sup>13</sup>

**Disclosure**

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

**Continuation of Suspension of Liquidation**

Pursuant to section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of corrosion-resistant steel from the PRC, which were entered, or withdrawn from warehouse, for consumption on or after October 6, 2015 (for those entities for which we found critical circumstances exist) or on or after January 4, 2016, the date of

publication in the **Federal Register** of the affirmative *Preliminary Determination* (for all entities for which we did not find critical circumstances exist). Further, pursuant to section 735(c)(1)(B)(ii) of the Act, the Department will instruct CBP to require a cash deposit<sup>14</sup> equal to the weighted-average amount by which the normal value exceeds U.S. price, adjusted where appropriate for export subsidies,<sup>15</sup> as follows: (1) For the exporter/producer combinations listed in the table above, the cash deposit rate will be equal to the dumping margin which the Department determined in this final determination; (2) for all combinations of PRC exporters/producers of merchandise under consideration which have not received their own separate rate above, the cash deposit rate will be equal to the dumping margin established for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate above, the cash deposit rate will be equal to the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. The suspension of liquidation instructions will remain in effect until further notice.

As noted above, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require a cash deposit less the amount of the countervailing duty determined to

constitute any export subsidies.<sup>16</sup> Therefore, in the event that a countervailing duty order is issued and suspension of liquidation is resumed in the companion countervailing duty investigation on corrosion-resistant steel from the PRC, the Department will instruct CBP to require cash deposits adjusted by the amount of export subsidies, as appropriate. These adjustments are reflected in the final column of the rate chart, above. Until such suspension of liquidation is resumed in the companion countervailing duty investigation, and so long as suspension of liquidation continues under this antidumping duty investigation, the cash deposit rates for this antidumping duty investigation will be the rates identified in the weighted-average margin column in the rate chart, above.

**International Trade Commission Notification**

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of our final determination. As our final determination is affirmative, in accordance with section 735(b)(2) of the

<sup>10</sup> See Final Decision Memorandum for a detailed discussion.

<sup>11</sup> See 19 CFR 351.308(c) and (d) and section 776(c) of the Act.

<sup>12</sup> See "Continuation of Suspension of Liquidation" section below.

<sup>13</sup> See Memorandum to the File, "Quantity and Value Questionnaire Recipients" (July 16, 2015).

<sup>14</sup> See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations, 76 FR 61042 (October 3, 2011).

<sup>15</sup> See section 772(c)(1)(C) of the Act.

<sup>16</sup> In the companion countervailing duty (CVD) investigation, the Department preliminarily found that Yieh Phui did not receive export subsidies. As a result, we did not adjust any of the companies' AD cash deposit rates for export subsidies. In the concurrent final CVD investigation, we determined that the Yieh Phui did receive export subsidies. In addition, pursuant to section 777A(f) of the Act, we normally adjust preliminary cash deposit rates for estimated domestic subsidy pass-through, where appropriate. However, in this case in the *Preliminary Determination*, we did not grant a domestic subsidy pass-through adjustment. See Preliminary Decision Memorandum. We received no comments on this issues, and we have not changed this decision for this final determination.

Act, the ITC will determine within 45 days whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury exists, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

### Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: May 24, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix I—List of Topics Discussed in the Final Decision Memorandum

- I. Summary
- II. Background
- III. Final Determination of Critical Circumstances, in Part
- IV. Scope Comments
- V. Scope of the Investigation
- VI. Changes Since the Preliminary Determinations
- VII. Use of Adverse Facts Available
- VIII. Discussion of the Issues
  - Comment 1: Ocean Freight Surrogate Value
  - Comment 2: Byproduct Offset
  - Comment 3: Hot-Rolled Steel Surrogate Value
  - Comment 4: Surrogate Financial Ratios
- IX. Recommendation

### Appendix II—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered

include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and

Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin free steel), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and

- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016-12965 Filed 6-1-16; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-475-832]

**Certain Corrosion-Resistant Steel Products From Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part**

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

**SUMMARY:** The Department of Commerce (“the Department”) determines that certain corrosion-resistant steel products (“corrosion-resistant steel”) from Italy is being, or is likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 735(a) of the Tariff Act of 1930, as amended (“the Act”). The period of investigation (“POI”) is April 1, 2014, through March 31, 2015. The final dumping margins of sales at LTFV are listed below in the “Final Determination” section of this notice.

**DATES:** *Effective Date:* June 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Julia Hancock or Susan Pulongbarit, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1394 or (202) 482-4031, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On January 4, 2016, the Department published the *Preliminary Determination* of this antidumping duty (“AD”) investigation.<sup>1</sup> The following events occurred since the *Preliminary Determination* was issued.

Between January and April 2016, the Department received supplemental questionnaire responses and revised databases from Acciaieria Arvedi SPA (“Arvedi”) and Marcegaglia SpA (“Marcegaglia”), the mandatory respondents in this investigation.

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government. All deadlines in this segment of the proceeding have been

<sup>1</sup> See *Certain Corrosion-Resistant Steel Products From Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 69 (January 4, 2016) (“*Preliminary Determination*”).

extended by four business days. The revised deadline for the final determination is now May 24, 2016.<sup>2</sup>

Between April 19, and April 20, 2016, Petitioners<sup>3</sup> submitted timely, properly filed case briefs.<sup>4</sup> Between April 25, and April 28, 2016, Arvedi, and Petitioners submitted timely, properly filed rebuttal briefs.<sup>5</sup> Additionally, on April 27, 2016, Marcegaglia submitted a timely, properly filed case brief.<sup>6</sup> Moreover, on May 2, 2016, Marcegaglia submitted a timely, properly filed rebuttal brief.<sup>7</sup>

Additionally, on May 3, 2016, the Department held a public hearing on this antidumping duty investigation.

**Scope of the Investigation**

The product covered by this investigation is corrosion-resistant steel from Italy. For a complete description of the scope of this investigation, see the “Scope of the Investigation,” in Appendix II of this notice.

<sup>2</sup> See Memorandum for the Record, from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, “Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm Jonas,” dated January 27, 2016.

<sup>3</sup> United States Steel Corporation, Nucor Corporation, ArcelorMittal USA, AK Steel Corporation, Steel Dynamics, Inc., and California Steel Industries, Inc., (collectively “Petitioners”).

<sup>4</sup> See Letter to the Secretary of Commerce from Petitioners “Case Brief Submitted on behalf of Petitioners: Brief on Arvedi,” (April 19, 2016) (“Petitioners’ Case Brief on Arvedi”); Letter to the Secretary of Commerce from Petitioners “Case Brief Submitted on Behalf of Petitioners: Brief on Marcegaglia,” (April 20, 2016) (“Petitioners’ Case Brief on Marcegaglia”).

<sup>5</sup> See Letter to the Secretary of Commerce from Petitioners “Rebuttal Brief on Marcegaglia Submitted on behalf of Petitioners,” (April 28, 2016) (“Petitioners’ Rebuttal Brief on Marcegaglia”); Letter to the Secretary of Commerce from Arvedi “Arvedi’s Rebuttal Brief,” (April 25, 2016) (“Arvedi’s Rebuttal Brief”); Letter to the Secretary of Commerce from Marcegaglia, “Marcegaglia’s Rebuttal Brief,” (April 28, 2016) (“Marcegaglia’s Rebuttal Brief”).

<sup>6</sup> See Letter to the Secretary of Commerce from Marcegaglia, “Revised Case Brief of Marcegaglia,” (April 27, 2016) (“Marcegaglia’s Revised Case Brief”). We note that this is a refiled and redacted case brief. See Letter to Marcegaglia from Paul Walker, Program Manager, Office V, Re: Corrosion-Resistant Steel Products from Italy: Rejection of New Factual Information, (April 26, 2016); Letter to the Secretary of Commerce from Marcegaglia, “Corrosion-Resistant Steel Products from Italy: Objection to the Department’s Rejection of Marcegaglia’s Case Brief,” (April 27, 2016).

<sup>7</sup> See Letter to the Secretary of Commerce from Marcegaglia, “Revised Rebuttal Brief of Marcegaglia,” (May 2, 2016) (“Marcegaglia’s Revised Rebuttal Brief”). We note that this is a refiled and redacted rebuttal brief. See Letter to Marcegaglia from Paul Walker, Program Manager, Office V, Re: Corrosion-Resistant Steel Products from Italy: Rejection of New Factual Information in Rebuttal Brief, (April 29, 2016).

**Scope Comments**

In accordance with the Preliminary Scope Determination,<sup>8</sup> the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, see the Final Scope Decision Memorandum.<sup>9</sup> The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum accompanying this notice, which is hereby adopted by this notice.<sup>10</sup> A list of the issues raised is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (“ACCESS”). ACCESS is available to registered users at <https://access.trade.gov> and it is available to all parties in the Central Records Unit, Room B-8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Issues and

<sup>8</sup> See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Corrosion-Resistant Steel Products From the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated December 21, 2015 (“Preliminary Scope Decision Memorandum”). See also Memorandum to the File, “Certain Corrosion-Resistant Steel Products From the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum,” dated January 29, 2016.

<sup>9</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Scope Comments Decision Memorandum for the Final Determinations,” dated concurrently with this notice.

<sup>10</sup> See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations “Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy” (May 24, 2016) (“Issues and Decision Memorandum”).

Decision Memorandum are identical in content.

### Verification

As provided in section 782(i) of the Act, between January and March 2016, the Department verified the sales and cost data reported by Arvedi and Marcegaglia. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Arvedi and Marcegaglia.<sup>11</sup>

### Changes Since the Preliminary Determination and Use of Adverse Facts Available

Based on our analysis of the comments received and our findings at verification, we revised the margin for Marcegaglia to reflect the application of facts available with an adverse inference, pursuant to sections 776(a)(2)(A)–(D) and 776(b) of the Act. Additionally, we made certain changes to the margin calculation for Arvedi and applied partial facts available with an adverse inference to

<sup>11</sup> See Memorandum to the File, through Paul Walker, Program Manager, Office V, from Julia Hancock and Susan Pulongbarit, Senior International Trade Analysts, and Omar Qureshi, International Trade Analyst, “Verification of Home Market Sales of Arvedi in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy,” (March 29, 2016); Memorandum to the File, through Paul Walker, Program Manager, Office V, from Susan Pulongbarit and Julia Hancock, Senior International Trade Analysts, and Omar Qureshi, International Trade Analyst, “Verification of Home Market Sales of Marcegaglia in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy,” (April 8, 2016); Memorandum to the File, through Paul Walker, Program Manager, Office V, from Susan Pulongbarit and Julia Hancock, Senior International Trade Analysts, “Verification of U.S. Sales of Marcegaglia in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy,” (April 7, 2016); Memorandum to the File, through Neal Halper, Director, Office of Accounting, from Christopher Zimpo and James Balog, Accountants, “Verification of the Cost of Production and Constructed Value Data Submitted by Arvedi in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy” (April 7, 2016); Memorandum to the File, through Neal Halper, Director, Office of Accounting, from James Balog, Accountant, “Verification of the Cost of Production and Constructed Value Data Submitted by Marcegaglia in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy” (April 12, 2016); Memorandum to the File, through Neal Halper, Director, Office of Accounting, from James Balog, Accountant, “Verification of the Further Manufacturing Data Submitted by Marcegaglia in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy” (April 12, 2016); Memorandum to the File, through Neal Halper, Director, Office of Accounting, from James Balog, Accountant, “Verification of the Further Manufacturing Data Submitted by Marcegaglia in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy” (April 12, 2016).

Arvedi for its non-prime sales in the home market and affiliated prime sales in the home market, pursuant to sections 776(a)(2)(A)–(D) and 776(b) of the Act. We have also revised the all-others rate. For a discussion of these changes, see the “Margin Calculations” section and Comments 1–11 of the Issues and Decision Memorandum.

### All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated “all-others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or de minimis margins, and any margins determined entirely under section 776 of the Act. Because Arvedi is the only respondent in this investigation for which the Department calculated a company-specific rate which is not zero, *de minimis* or based entirely on facts available, pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for Arvedi as the estimated weighted-average dumping margin assigned to all other producers and exporters of the merchandise under consideration.<sup>12</sup>

### Final Determination

The Department determines that the final weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (percent)
Acciaieria Arvedi S.p.A .....	12.63
Marcegaglia S.p.A .....	92.12
All-Others .....	12.63

### Disclosure

We will disclose the calculations performed to interested parties within five days of the public announcement of this final determination in accordance with 19 CFR 351.224(b).

<sup>12</sup> With two respondents, we would normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company’s publicly-ranged values for the merchandise under consideration. We would compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010).

### Final Affirmative Determination of Critical Circumstances, in Part

On November 5, 2015, the Department issued its preliminary critical circumstances determination. Pursuant to this determination, the Department determined that critical circumstances did not exist for imports of subject merchandise from Arvedi, Marcegaglia, and “all-others.”<sup>13</sup> Based on Arvedi’s and Marcegaglia’s final dumping margins, and further analysis following the *Preliminary Determinations of Critical Circumstances*, we are modifying our findings for the final determination and finding critical circumstances exist for Marcegaglia. For a complete discussion of this issue, see the “Affirmative Finding of Critical Circumstances, In Part” section of the Issues and Decision Memorandum.

### Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (“CBP”) to continue to suspend liquidation of all appropriate entries of corrosion-resistant steel from Italy, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after January 8, 2016, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**. However, because prior to this final determination provisional measures were not in effect for Marcegaglia, the Department reached a negative critical circumstances determination at the *Preliminary Determination*, and has reached an affirmative critical circumstances determination with respect to Marcegaglia for this final determination, pursuant to section 735(c)(4)(C) of the Act, the Department will instruct CBP to suspend liquidation of all entries of corrosion-resistant steel from Italy from Marcegaglia which were entered, or withdrawn from warehouse, for consumption on or after 90-days prior to the date of publication of this final determination in the **Federal Register**, and require a cash deposit for such entries as noted above.

Further, CBP shall require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price, as follows: (1) The rate for the mandatory respondents listed above will be the respondent-specific

<sup>13</sup> See *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015) (“*Preliminary Determinations of Critical Circumstances*”).

weighted-average dumping margin determined in this final determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; and (3) the rate for all other producers or exporters will be 12.63 percent. The instructions suspending liquidation will remain in effect until further notice.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds U.S. price as indicated in the chart above,<sup>14</sup> adjusted where appropriate for export subsidies.<sup>15</sup> The Department has determined in its companion countervailing duty investigation of corrosion-resistant steel from Italy that subject merchandise exported by Arvedi and Marcegaglia did not benefit from export subsidies.<sup>16</sup> As a result, the Department will make no adjustment to Arvedi's or Marcegaglia's cash deposit rates. The rate for all other producers or exporters when adjusted for export subsidies is 12.48 percent.

### ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of corrosion-resistant steel from Italy no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the

<sup>14</sup> See *Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations*, 76 FR 61042 (October 3, 2011).

<sup>15</sup> See section 772(c)(1)(C) of the Act. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin calculation program, but in the cash deposit instructions issued to CBP. See *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>16</sup> See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy: Final Affirmative Determination*, dated concurrently with this notice.

Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

### Notification Regarding Administrative Protective Orders ("APO")

This notice serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: May 24, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix I—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of

certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels and high strength low alloy ("HSLA") steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels ("AHSS") and Ultra High Strength Steels ("UHSS"), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin free steel"), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
  - Clad products in straight lengths of 4.7625 mm or more in composite thickness

and of a width which exceeds 150 mm and measures at least twice the thickness; and

- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

## Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
  - II. Background
  - III. Period of Investigation
  - IV. Changes Since the Preliminary Determination
  - V. Application of Total Adverse Facts Available With Regard to Marcegaglia
  - VI. Selection of AFA Rate and Corroboration
  - VII. Affirmative Finding of Critical Circumstances, In Part
  - VIII. List of Comments
  - IX. Discussion of Comments
- Comment 1: Application of Total Adverse Facts Available (“AFA”) to Marcegaglia
- A. Misclassified Export Price (“EP”) Sales
- Comment 2: Corporate Name Change of Marcegaglia
- Comment 3: Application of Adverse Facts Available (“AFA”) to Arvedi’s Non-Prime Sales
- Comment 4: Application of AFA to Arvedi’s Packing Revenue
- Comment 5: Treatment of Arvedi’s Cost of Manufacturing (“COM”)
- A. Other Operating Costs
  - B. Net Extraordinary Charges
  - C. Bad Debt Expenses
  - D. Offset of Electricity Sales to COM
  - E. Adjust Variable Manufacturing Cost Based on Sales Quantities
  - F. Disallow Insurance Claim as “Indirect Damages” As An Offset to Fixed Overhead Costs
- Comment 6: Programming Errors in Arvedi’s Margin Program
- A. Net U.S. Price Variable
  - B. Marine Insurance

Comment 7: Revised U.S. Sales Data for Arvedi

Comment 8: Adjustments to Arvedi’s Cost Data Based on Verification

[FR Doc. 2016–12969 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C–533–864]

### Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From India: Final Affirmative Determination

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

**SUMMARY:** The Department of Commerce (the “Department”) determines that countervailable subsidies are being provided to producers and exporters of certain corrosion-resistant steel products (“corrosion-resistant steel”) from India as provided in section 705 of the Tariff Act of 1930, as amended (the “Act”). For information on the subsidy rates, see the “Final Determination” section of this notice. The period of investigation is January 1, 2014, through December 31, 2014.

**DATES:** *Effective Date:* June 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Andrew Devine, Paul Walker, or Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202–482–0238, 202–482–0413, or 202–482–2312, respectively.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Department published the *Preliminary Determination* on November 6, 2015,<sup>1</sup> and placed the Post-Preliminary Memorandum on the record of this investigation on March 9, 2016.<sup>2</sup> A summary of the events that occurred since the post-preliminary analysis, as well verification and a full discussion of the issues raised by parties for this final determination, may be found in the

<sup>1</sup> See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Preliminary Affirmative Determination*, 80 FR 68854 (November 6, 2015) (“*Preliminary Determination*”).

<sup>2</sup> See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, re: “Post-Preliminary Analysis for the Countervailing Duty Investigation of Certain Corrosion Resistant Steel from India,” dated March 9, 2016 (“*Post-Preliminary Memorandum*”).

Issues and Decision Memo.<sup>3</sup> The Issues and Decision Memo is a public document and is on file electronically *via* Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (“ACCESS”). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://trade.gov/enforcement>. The signed Issues and Decision Memo and the electronic versions of the Issues and Decision Memo are identical in content.

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now May 24, 2016.<sup>4</sup>

#### Scope of the Investigation

The products covered by this investigation are corrosion-resistant steel products from India. For a complete description of the scope of this investigation, see Appendix II. The Department did not receive comments regarding the scope of this investigation.

#### Scope Comments

In accordance with the Preliminary Scope Determination,<sup>5</sup> the Department

<sup>3</sup> See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Certain Corrosion Resistant Steel from India,” dated concurrently with this notice (“*Issues and Decision Memo*”).

<sup>4</sup> See Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,” dated January 27, 2016.

<sup>5</sup> See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Corrosion-Resistant Steel Products From the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated December 21, 2015 (“*Preliminary Scope Decision Memorandum*”). See also Memorandum to the File, “Certain Corrosion-Resistant Steel Products From the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum,” dated January 29, 2016.

set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.<sup>6</sup> The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

### Methodology

The Department is conducting this countervailing duty (“CVD”) investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, we determine that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>7</sup> For a full description of the methodology underlying our conclusions, *see* the Issues and Decision Memo.

### Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memo. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memo, is attached to this notice at Appendix I.

### Use of Adverse Facts Available

In making this final determination, the Department relied, in part, on facts available and, because JSW Steel Limited did not act to the best of its ability to respond to the Department’s requests for information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.<sup>8</sup> For further information, *see* the section “Use of Facts Otherwise Available and Adverse Inferences” in the accompanying Issues and Decision Memo.

<sup>6</sup> *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Scope Comments Decision Memorandum for the Final Determinations,” dated concurrently with this notice.

<sup>7</sup> *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

<sup>8</sup> *See* sections 776(a) and (b) of the Act.

### Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, we made certain changes to the subsidy program rate calculations since the *Preliminary Determination*. For a discussion of these changes, *see* the Issues and Decision Memo.

### Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise individually investigated. In accordance with section 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an “all-others” rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents by those companies’ exports of the subject merchandise to the United States. Under section 705(c)(5)(i) of the Act, the all-others rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated as well as rates based entirely on facts otherwise available. Where the rates for the individually investigated companies are all zero or *de minimis*, or determined entirely using facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an all-others rate using “any reasonable method.” Where the countervailable subsidy rates for all of the individually investigated respondents are zero or *de minimis* or are based on total AFA, the Department’s practice, pursuant to 705(c)(5)(A)(ii), is to calculate the all others rate based on a simple average of the zero or *de minimis* margins and the margins based on total AFA. Pursuant to section 705(c)(5)(A)(i) of the Act, we have not calculated the “all-others” rate by weight averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. Therefore, and consistent with the Department’s practice, for the “all-others” rate, we calculated a simple average of the two responding firms’ rates.<sup>9</sup>

<sup>9</sup> *See, e.g., Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 5089 (January 30, 2015), unchanged in *Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 64745 (October 24, 2015).

Exporter/Producer	Subsidy rate (percent)
JSW Steel Limited and JSW Steel Coated Products Limited .....	29.46
Uttam Galva Steels Limited and Uttam Value Steels Limited .....	8.00
All Others .....	18.73

### Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (“CBP”) to suspend liquidation of entries of merchandise under consideration from India that were entered or withdrawn from warehouse, for consumption, on or after November 6, 2015, which is the publication date in the **Federal Register** of the *Preliminary Determination*. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after March 5, 2016.

If the U.S. International Trade Commission (the “ITC”) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

### International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.



## Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 24, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. List of Issues
- V. Subsidies Valuation
- VI. Use of Facts Otherwise Available and Adverse Inferences
- VII. Analysis of Programs
- VIII. Calculation of the All-Others Rate
- IX. Analysis of Comments
  - Comment 1: Whether the AAP Is a Countervailable Subsidy
  - Comment 2: Whether the DFIA Program Is a Countervailable Subsidy
  - Comment 3: Whether the DDB Program Is a Countervailable Subsidy
  - Comment 4: Whether the EPCGS Is a Countervailable Subsidy
  - Comment 5: Whether the Various State Government of Maharashtra Programs Are Countervailable Subsidies
  - Comment 6: Whether Status Holder Incentive Scrips (“SHIS”) Purchased From Third Parties Confer a Countervailable Subsidy
  - Comment 7: Double-Counting of the Status Certificate Program (“SCP”) and SHIS
  - Comment 8: Whether UVSL Was Required To File a Questionnaire Response
  - Comment 9: Treatment of Indrajit Power Private Ltd. (“IPPL”)
  - Comment 10: UGSL’s Use of the EPCGS (Unreported License)
  - Comment 11: Whether the Department Should Apply Adverse Facts Available to JSWSL Based on Failure To Report Information About Subsidiaries
  - Comment 12: Whether JSWSL Used the DFIA Program or the Incremental Export Incentivisation Scheme
  - Comment 13: JCPSL’s Use of the Focus Market Scheme
  - Comment 14: JSWSL’s Use of the EPCGS (Unreported License)
- X. Recommendation

## Appendix II—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) Where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free

(“IF”)) steels and high strength low alloy (“HSLA”) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (“AHSS”) and Ultra High Strength Steels (“UHSS”), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs



purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016-12967 Filed 6-1-16; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-475-833]

#### Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From Italy: Final Affirmative Determination and Final Affirmative Critical Circumstances, in Part

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

**SUMMARY:** The Department of Commerce (the “Department”) determines that countervailable subsidies are being provided to producers and exporters of certain corrosion-resistant steel products (“corrosion-resistant steel”) from Italy as provided in section 705 of the Tariff Act of 1930, as amended (the “Act”). For information on the estimated subsidy rates, see the “Final Determination” section of this notice. The period of investigation is January 1, 2014, through December 31, 2014.

**DATES:** *Effective Date:* June 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Bob Palmer, Irene Gorelik, and Katie Marksberry, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202.482.9068, 202.482.6905, and 202.482.7906, respectively.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Department published the *Preliminary Determination* on November 6, 2015,<sup>1</sup> published the *Preliminary Critical Circumstances* on November 5, 2015,<sup>2</sup> and placed the Post-Preliminary Analysis on the record of this investigation on April 13, 2016.<sup>3</sup> A

<sup>1</sup> See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From Italy: Preliminary Affirmative Determination*, 80 FR 68839 (November 6, 2015) (“*Preliminary Determination*”) and accompanying Preliminary Decision Memorandum (“*Prelim Decision Memo*”).

<sup>2</sup> See *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015) (“*Preliminary Critical Circumstances*”).

<sup>3</sup> See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, re: “Post-Preliminary Analysis of Countervailing Duty

summary of the events that occurred since the post-preliminary analysis, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memo.<sup>4</sup> The Issues and Decision Memo is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (“ACCESS”). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://trade.gov/enforcement>. The signed Issues and Decision Memo and the electronic versions of the Issues and Decision Memo are identical in content.

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now May 24, 2016.<sup>5</sup>

#### Scope of the Investigation

The products covered by this investigation are corrosion-resistant steel products from Italy. For a complete description of the scope of this investigation, see Appendix II.

#### Scope Comments

In accordance with the Preliminary Scope Determination,<sup>6</sup> the Department

Investigation: Certain Corrosion Resistant Steel from Italy,” dated April 13, 2016 (“*Post-Preliminary Analysis*”).

<sup>4</sup> See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Certain Corrosion Resistant Steel from Italy,” dated concurrently with this notice (“*Issues and Decision Memo*”).

<sup>5</sup> See Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,” dated January 27, 2016.

<sup>6</sup> See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Corrosion-Resistant Steel Products From the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated December 21, 2015

set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, see the Final Scope Decision Memorandum.<sup>7</sup> The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

#### Methodology

The Department is conducting this countervailing duty (“CVD”) investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, we determine that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>8</sup> For a full description of the methodology underlying our conclusions, see the Issues and Decision Memo.

#### Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memo. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memo, is attached to this notice at Appendix I.

#### Adverse Facts Available

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply “facts otherwise available” if: (1) Necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a

(“*Preliminary Scope Decision Memorandum*”). See also Memorandum to the File, “*Certain Corrosion-Resistant Steel Products From the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum*,” dated January 29, 2016.

<sup>7</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “*Scope Comments Decision Memorandum for the Final Determinations*,” dated concurrently with this notice.

<sup>8</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Furthermore, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

In this case, the Department twice requested information with respect to the *Industrial Development Grants Under Law 488/92, Technological Innovation Grants and Loans Under Law 46/82, Certain Social Security Reductions and Exemptions (“Sgravi” Benefits)*, and *Equalization Fund* from the Government of Italy. The Government of Italy withheld necessary information with respect to each of these programs, failed to provide information in the form and manner requested, and did not provide requested information by the deadlines for submission of the information, as explained in more detail in the Prelim Decision Memo and the Issues and Decisions Memo. Furthermore, the Department has concluded that the Government of Italy did not cooperate to the best of its ability in providing the requested information. Accordingly, pursuant to sections 776(a) and (b) of the Act, we have determined that for each of these programs, the application of adverse facts available is warranted. For the *Industrial Development Grants Under Law 488/92* and *Technological Innovation Grants and Loans Under Law 46/82*, and *Equalization Fund* programs, we have determined as adverse facts available that these programs are *de facto* specific, in accordance with section 771(5A)(D)(iii) of the Act. For the *Sgravi Benefits*, we have determined that the reduced tax revenue due to the Government of Italy under these provisions constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act as revenue forgone. We have also determined that the revenue forgone under the *Sgravi Benefits*, is either *de facto* specific, in accordance with section 771(5A)(D)(ii) of the Act, or regionally specific, in accordance with section 771(5A)(D)(iv) of the Act. More specifically, we find that Laws 53/2000 and 167/2011 are *de facto* specific accordance with 771(5A)(iii) of the Act, and that Law 223/91 is regionally

specific, in accordance with section 771(5A)(D)(iv).<sup>9</sup>

In addition, one company selected as a mandatory respondent, Ilva S.p.A. (“Ilva”), did not respond to the Department’s questionnaires or participate in the investigation. Accordingly, as adverse facts available, pursuant to sections 776(a) and (b), we have determined that Ilva benefitted from certain countervailable programs during the POI and calculated a rate for Ilva based on those programs.<sup>10</sup> For further information, see the section “Use of Facts Otherwise Available and Adverse Inferences” in the accompanying Issues and Decision Memo.

#### Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, we made certain changes to Ilva’s subsidy rate calculations since the *Preliminary Determination*. Additionally we have modified our analysis of the Equalization Fund and now determine that an adverse inference is warranted in determining whether the program is specific. For a discussion of these changes, see the Issues and Decision Memo.

#### Final Affirmative Determination of Critical Circumstances, in Part

On July 23, 2015, Petitioners<sup>11</sup> filed a timely critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of corrosion-resistant steel from Italy.<sup>12</sup> We preliminarily determined that critical circumstances did not exist for Acciaieria Arvedi S.p.A. (“Arvedi”), Marcegaglia S.p.A. (“Marcegaglia”), and the all-others companies, but did exist for Ilva. That determination remains unchanged and a discussion of our final critical circumstances determination can be found in the Issues and Decision Memo

<sup>9</sup> See Prelim Decision Memo.

<sup>10</sup> See sections 776(a) and (b) of the Act.

<sup>11</sup> United States Steel Corporation, Nucor Corporation, Steel Dynamics Inc., California Steel Industries, ArcelorMittal USA LLC, and AK Steel Corporation (collectively, “Petitioners”).

<sup>12</sup> See Letter from Petitioners, “Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Critical Circumstances Allegations,” July 23, 2015.

at the section, “Final Determination of Critical Circumstances, In Part.”

#### Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise individually investigated. In accordance with section 705(c)(5)(A)(i) of the Act, for companies not individually investigated, we apply an “all-others” rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents by those companies’ exports of the subject merchandise to the United States. Under section 705(c)(5)(i) of the Act, the all-others rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated as well as rates based entirely on facts otherwise available. Where the rates for the individually investigated companies are all zero or *de minimis*, or determined entirely using facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an all-others rate using “any reasonable method.” Where the countervailable subsidy rates for all of the individually investigated respondents are zero or *de minimis* or are based on AFA, the Department’s practice, pursuant to 705(c)(5)(A)(ii), is to calculate the all others rate based on a simple average of the zero or *de minimis* margins and the margins based on AFA. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the “all-others” rate by weight averaging the rates of the two individually investigated respondents and the rate based on AFA, because Ilva failed to report volume data that would enable the Department to determine the all-others rate based on a weighted-average. Therefore, and consistent with the Department’s practice, for the “all-others” rate, we calculated a simple average of the two responding firms’ *de minimis* rates and the AFA rate for the non-responsive company.<sup>13</sup>

<sup>13</sup> See, e.g., *Countervailing Duty Investigation of Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Determination*, 79 FR 10097 (February 24, 2014); see also, *Non-Oriented Electrical Steel From Taiwan: Final Affirmative Countervailing Duty Determination*, 79 FR 61602 (October 14, 2014) and accompanying Issues and Decision Memo at VIII. Calculation of the All Others Rate.

Exporter/producer	Subsidy rate (percent)
Acciaieria Arvedi S.p.A., Finarvedi S.p.A., Arvedi Tubi Acciaio S.p.A., Euro-Trade S.p.A., and Siderurgica Triestina Srl., collectively, the Arvedi Group	0.48 ( <i>de minimis</i> ).
Marcegaglia S.p.A. and Marfin S.p.A., the Marcegaglia Group	0.07 ( <i>de minimis</i> ).
Ilva S.p.A	38.51
All Others	13.02

### Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (“CBP”) to suspend liquidation of appropriate entries of merchandise under consideration from Italy<sup>14</sup> that were entered or withdrawn from warehouse, for consumption, on November 6, 2015, or after August 7, 2015 (for those entities for which we found critical circumstances exist), which is 90 days before the publication date in the **Federal Register** of the *Preliminary Determination*. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after March 5, 2016, but to continue the suspension of liquidation of all entries from August 7, 2015 or November 6, 2015, as relevant, through March 4, 2016.

If the U.S. International Trade Commission (the “ITC”) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above, other than those produced and/or exported by Arvedi and Marcegaglia because those companies rates are *de minimis*. Because Arvedi and Marcegaglia were found to receive *de minimis* subsidies, they would be excluded from the CVD order. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited as a result of the suspension of liquidation will be refunded or canceled.

### International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are

<sup>14</sup> Other than entries produced and/or exported by Arvedi and Marcegaglia for which we calculated *de minimis* rates in the *Preliminary Determination*.

making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

### Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: May 24, 2016.

### Paul Piquado,

*Assistant Secretary for Enforcement and Compliance.*

### Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Final Determination of Critical Circumstances, in Part
- IV. Scope of the Investigation
- V. List of Issues
- VI. Subsidies Valuation
- VII. Use of Facts Otherwise Available and Adverse Inferences
- VIII. Analysis of Programs
- IX. Calculation of the All-Others Rate
- X. Analysis of Comments
  - Comment 1: Whether White Certificates Are Countervailable
  - Comment 2: Whether the Program To Purchase Ferriera Di Servola Is Not Countervailable or Not Used During the POI
  - Comment 3: Whether To Include Countervailable Programs From the Post-Preliminary Memo in Ilva’s AFA Rate

### XI. Recommendation

#### Appendix II—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or

- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (“IF”)) steels and high strength low alloy (“HSLA”) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (“AHSS”) and Ultra High Strength Steels (“UHSS”), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and

- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers:

7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS

item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–12971 Filed 6–1–16; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–533–863]

#### Certain Corrosion-Resistant Steel Products From India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances

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

**SUMMARY:** The Department of Commerce (“the Department”) determines that certain corrosion-resistant steel products (“corrosion-resistant steel”) from India is being, or is likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 735(a) of the Tariff Act of 1930, as amended (“the Act”). The period of investigation (“POI”) is April 1, 2014, through March 31, 2015. The final dumping margins of sales at LTFV are listed below in the “Final Determination” section of this notice.

**DATES:** *Effective Date:* June 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Kabir Archuleta or Ryan Mullen, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2593 or (202) 482–5260, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 4, 2016, the Department published the *Preliminary Determination* of this antidumping duty (“AD”) investigation.<sup>1</sup> The following

<sup>1</sup> See *Certain Corrosion-Resistant Steel Products from India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 63 (January 4, 2016) (“*Preliminary Determination*”).

events occurred since the *Preliminary Determination* was issued.

In April 2016, the Department received revised databases from JSW<sup>2</sup> and Uttam Galva Steels Ltd. (“Uttam Galva”), the mandatory respondents in this investigation.

Additionally, in April 2016, Petitioners,<sup>3</sup> JSW, and Uttam Galva submitted case briefs<sup>4</sup> and rebuttal briefs.<sup>5</sup> A hearing was held on May 4, 2016.

Also, as explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its authority to toll all administrative deadlines due to the recent closure of the Federal Government.<sup>6</sup> As a consequence, all deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final results is now May 24, 2016.

#### Scope of the Investigation

The product covered by this investigation is corrosion-resistant steel from the India. For a complete description of the scope of this investigation, see the “Scope of the Investigation,” in Appendix I of this notice.

#### Scope Comments

In accordance with the Preliminary Scope Determination,<sup>7</sup> the Department

<sup>2</sup> We refer to JSW Steel Ltd. (“JSW”) and its wholly-owned affiliate JSW Steel Coated Products Limited (“JSCPL”) collectively as “JSW.”

<sup>3</sup> Petitioners are United States Steel Corporation, Nucor Corporation, ArcelorMittal USA, AK Steel Corporation, Steel Dynamics, Inc., and California Steel Industries, Inc.

<sup>4</sup> See Letter to the Secretary of Commerce from Petitioners, “Case Brief of Petitioners” (April 18, 2016); Letter to the Secretary of Commerce from JSW, “JSW’s Resubmitted Case Brief” (April 21, 2016); and Letter to the Secretary of Commerce from Uttam Galva, “Uttam Galva Steels Limited’s Case Brief” (April 19, 2016).

<sup>5</sup> See Letter to the Secretary of Commerce from Petitioners, “Petitioners’ Rebuttal Brief” (April 25, 2016); Letter to the Secretary of Commerce from JSW, “JSW’s Rebuttal Brief” (April 25, 2016); and Letter to the Secretary of Commerce from Uttam Galva, “Uttam Galva Steels Limited’s Rebuttal Brief” (April 25, 2016).

<sup>6</sup> See Memorandum to the File from Ron Lorentzen, Acting A/S for Enforcement & Compliance, “Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas” dated January 27, 2016.

<sup>7</sup> See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Corrosion-Resistant Steel Products From the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated December 21, 2015 (“Preliminary Scope Decision Memorandum”). See also Memorandum to the File, “Certain Corrosion-Resistant Steel Products From the People’s Republic

Continued

set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, see the Final Scope Decision Memorandum.<sup>8</sup> The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice.<sup>9</sup> A list of the issues raised is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at <https://access.trade.gov> and it is available to all parties in the Central Records Unit, Room B-8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

### Verification

As provided in section 782(i) of the Act, in January, February, and March 2016, the Department verified the sales and cost data reported by the mandatory respondents, pursuant to section 782(i) of the Act. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Respondents.<sup>10</sup>

of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum," dated January 29, 2016.

<sup>8</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

<sup>9</sup> See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from India" (May 24, 2016) ("Issues and Decision Memorandum").

<sup>10</sup> See Memorandum to the File, through Neal Halper, Office Director, and Peter Scholl, Lead

### Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for JSW and Uttam Galva. For a discussion of these changes, see the "Margin Calculations" and "Comparisons to Fair Value" sections of the Issues and Decision Memorandum. We have also revised the all-others rate.

### All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins, and margins determined entirely under section 776 of the Act. Therefore, we calculated the all-others rate based on a weighted average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration.<sup>11</sup>

Accountant, from Ji Young Oh, Senior Accountant, "Verification of the Cost Response of JSW Steel Limited and JSW Steel Coated Products Limited in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Flat Products from India" (April 7, 2016); Memorandum to the File, through Neal Halper, Office Director, and Peter Scholl, Lead Accountant, from Alma Sepulveda, Senior Accountant, and Laurens van Houten, Senior Accountant, "Verification of the Cost Response of Uttam Galva Steels Limited in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Flat Products from India" (March 23, 2016); Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Kabir Archuletta, Senior International Trade Analyst, Ryan Mullen, International Trade Analyst, and Jessica Weeks, International Trade Analyst, "Verification of JSW Steel Ltd. and JSW Coated Steel Products in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel from India" (April 7, 2016); Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Ryan Mullen, International Trade Analyst, "Verification of Home Market and U.S. Sales of Uttam Galva Steels Limited in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from India" (April 7, 2016); and Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Ryan Mullen, International Trade Analyst, "Verification of U.S. Sales of Uttam Galva North America in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from India" (April 7, 2016).

<sup>11</sup> With two respondents, we would normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We would compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other

### Final Determination

The Department determines that the final weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (percent)
JSW: <sup>12</sup> .....	4.44
JSW Steel Ltd	
JSW Coated Products Limited	
Uttam Galva: <sup>13</sup> .....	3.05
Uttam Galva Steels Limited	
Uttam Galva Steels Limited	
Atlantis International Services Company Ltd	
Uttam Galva Steels, Netherlands, B.V	
Uttam Galva Steels (BVI) Limited	
All-Others .....	3.86

### Disclosure

We will disclose the calculations performed to interested parties within five days of the public announcement of this final determination in accordance with 19 CFR 351.224(b).

### Final Negative Determination of Critical Circumstances

On October 29, 2015, the Department found that critical circumstances do not exist for imports exported by JSW, Uttam Galva, and "all others."<sup>14</sup> Based

companies. See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010).

<sup>12</sup> We find JSWSL and its wholly-owned affiliated JSCL, (collectively "JSW") are affiliated and have met the criteria to be collapsed. See Memorandum to the File, through Catherine Bertrand, Program Manager, Enforcement and Compliance, Office V, from Kabir Archuletta, Senior International Trade Analyst, Enforcement and Compliance, Office V, "Antidumping Duty Investigation of Certain Corrosion Resistant Steel Products from India: JSW Affiliation and Collapsing Memorandum," dated concurrently with this determination. Therefore, we will assign one rate to these companies.

<sup>13</sup> We find Uttam Galva to be affiliated with these companies and that they have met the criteria to be treated as a single entity. For further discussion of this issue, which includes business proprietary information, see Memorandum to James C. Doyle, Director, Office V, through Catherine Bertrand, Program Manager, Office V, from Ryan Mullen, International Trade Analyst, Office V, "Antidumping Duty Investigation of Certain Corrosion Resistant Steel Products from India: Uttam Galva Affiliation and Single Entity Memorandum," dated concurrently with this determination. Therefore, we will assign one rate to these companies.

<sup>14</sup> See *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determination of Critical Circumstances*, 80 FR 68504, (November 5, 2015).

on the final dumping margins of JSW and Uttam Galva and further analysis following the *Preliminary Critical Circumstances Determination*, we are not modifying our findings for the final determination. For a complete discussion of this issue, see the “Negative Finding of Critical Circumstances” section of the Issues and Decision Memorandum.

### Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (“CBP”) to continue to suspend liquidation of all appropriate entries of corrosion-resistant steel from India, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after January 4, 2016, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**.

Further, CBP shall require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price, as follows: (1) For the exporters/producers listed in the table above, the cash deposit rates will be equal to the dumping margin which the Department determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 4.03 percent. These instructions suspending liquidation will remain in effect until further notice.

Pursuant to section 733 (d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds U.S. price as indicated in the chart above,<sup>15</sup> adjusted where appropriate for export subsidies,<sup>16</sup> as follows: (1) The rate for JSW, when adjusted for export subsidies, is 0.49 percent; (2) the rate for Uttam Galva, when adjusted for export subsidies, is

0.00 percent; (3) the rate for all other producers or exporters, when adjusted for export subsidies, is 0.00 percent.

The instructions suspending liquidation will remain in effect until further notice.

### ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of corrosion-resistant steel from India no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

### Notification Regarding Administrative Protective Orders (“APO”)

This notice serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: May 24, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix I—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm

or greater, regardless of form of coil (e.g., in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (e.g., in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (e.g., in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, i.e., products which have been “worked after rolling” (e.g., products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (e.g., the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (“IF”)) steels and high strength low alloy (“HSLA”) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (“AHSS”) and Ultra High Strength Steels (“UHSS”),

<sup>15</sup> See *Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations*, 76 FR 61042 (October 3, 2011).

<sup>16</sup> See section 772(c)(1)(C) of the Act. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin calculation program, but in the cash deposit instructions issued to CBP. See *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and

- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers:

7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

## Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Margin Calculations
5. Comparisons to Fair Value
6. List of Comments
7. Discussion of Comments

- Comment 1: Duty Drawback  
 Comment 2: Date of Sale  
 Comment 3: Revision of Uttam Galva’s Yield Strength Product Characteristics  
 Comment 4: JSW’s Sales Below Cost  
 Comment 5: Export Subsidy Offset Deduction for Duty Drawback Subsidy Rates  
 Comment 6: JSW’s Forward Exchange Rate Contracts  
 Comment 7: Treatment of JSW’s Domestic Brokerage and Handling  
 Comment 8: Adjustments for JSW Verification Findings  
 Comment 9: JSW’s POI Material Costs  
 Comment 10: Uttam Galva’s Cost of Production Minor Corrections  
 Comment 11: JSW Royalty Expense  
 Comment 12: Ministerial Errors  
 Comment 13: Uttam Galva’s Differential Pricing Analysis  
 8. Negative Finding of Critical Circumstances  
 9. Conclusion

[FR Doc. 2016–12986 Filed 6–1–16; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–040]

#### Truck and Bus Tires From the People’s Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

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

**DATES:** *Effective Date:* June 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Yang Jin Chun or Andre Gziryan, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5760 and (202) 482–2201, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 18, 2016, the Department of Commerce (the Department) initiated the antidumping duty investigation of truck and bus tires from the People’s Republic of China.<sup>1</sup> The *Initiation Notice* stated that the Department would issue its preliminary determination for this investigation no later than 140 days after the date of the initiation in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(b)(1), unless postponed.<sup>2</sup>

<sup>1</sup> See *Truck and Bus Tires From the People’s Republic of China: Initiation of Antidumping Duty Investigation*, 81 FR 9434 (February 25, 2016) (*Initiation Notice*).

<sup>2</sup> *Id.*, 81 FR at 9438.

#### Period of Investigation

The period of investigation is July 1, 2015, through December 31, 2015.

#### Postponement of Preliminary Determination

Section 733(c)(1)(A) of the Act permits the Department to postpone the time limit for the preliminary determination if it receives a timely request from the petitioner for postponement. The Department may postpone the preliminary determination under section 733(c)(1) of the Act no later than 190 days after the date on which the administering authority initiates an investigation.

On May 20, 2016, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (the petitioner) made a timely request under 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination of this investigation.<sup>3</sup> The petitioner states that a postponement is necessary given a very large number of separate rate applications and the need for additional time to analyze responses from the two selected respondents.<sup>4</sup>

For the reasons stated above, and because there are no compelling reasons to deny the petitioner’s request, the Department is fully postponing the preliminary determination of this investigation in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) to August 26, 2016. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: May 26, 2016.

**Paul Piquado,**

*Assistant Secretary For Enforcement and Compliance.*

[FR Doc. 2016–13044 Filed 6–1–16; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the

<sup>3</sup> See *Truck and Bus Tires from the People’s Republic of China (A–570–040): Petitioner’s Request to Extend the Preliminary Determination* dated May 20, 2016.

<sup>4</sup> *Id.*



following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Quantitative Assessment of Spatially-Explicit Social Values Relative to Wind Energy Areas: Outer Continental Shelf Offshore North Carolina.

*OMB Control Number:* 0648–xxxx.

*Form Number(s):* None.

*Type of Request:* Regular (request for a new information collection).

*Number of Respondents:* 3,225 (300 for a pretest; 2,925 for the final survey).

*Average Hours per Response:* 20 minutes.

*Burden Hours:* 1,075.

*Needs and Uses:* This request is for a new information collection.

Pursuant to the Outer Continental Shelf Land Act, the National Environmental Policy Act and the Coastal Zone Management Act, this request is for a new data collection to benefit the National Oceanic and Atmospheric Administration (NOAA), Bureau of Ocean Energy Management (BOEM), and policy-makers on the state and local level in North Carolina. BOEM has identified three wind energy areas for potential development on the outer continental shelf of North Carolina. The National Ocean Service (NOS) proposes to collect data on the knowledge, beliefs, social values, and attitudes of North Carolina and South Carolina residents relative to marine and coastal landscapes, alternative energy production options, and offshore wind energy development. Respondents will be sampled from households in eight to ten coastal counties.

The required information will be used to objectively assess the level of support and/or opposition for offshore wind energy development in the region, as well as identify the relevant issues and concerns most salient to residents. The information will be used by BOEM, NOAA, and others to improve agency understanding about the beliefs, social values, attitudes, and concerns of people potentially affected by offshore wind energy development. Such information will be used to ascertain the possible sociocultural outcomes of offshore wind energy development in the region, such as an enhancement or reduction in enjoyment of the coastal landscape/seascape. Additionally, information collected will be used to improve communication efforts targeted to residents, enabling agencies to more effectively and efficiently direct outreach and community inclusion activities.

*Affected Public:* Individuals or households.

*Frequency:* One time.

*Respondent's Obligation:* Voluntary.

This information collection request may be viewed at [reginfo.gov](http://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](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395–5806.

Dated: May 26, 2016.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2016–12912 Filed 6–1–16; 8:45 am]

**BILLING CODE 3510–JE–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XE661**

#### 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 Whiting 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 Monday, June 20, 2016 at 10 a.m.

**ADDRESSES:**

*Meeting address:* The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311; fax: (207) 772–4017.

*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:**

**Agenda**

The committee will receive a Plan Development Team report on analyses of whiting fleet history data for developing Amendment 22 limited

access qualification alternatives. The committee will also consider whether to continue work on developing limited access alternatives for Amendment 22 to meet the purpose and need in the public scoping document. The committee will review and consider law enforcement priorities as they pertain to the whiting fishery. They will also address other business as necessary.

#### 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 27, 2016.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016–13016 Filed 6–1–16; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Paperwork Submissions Under the Coastal Zone Management Act Federal Consistency Requirements

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

**ACTION:** Notice.

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

**DATES:** Written comments must be submitted on or before August 1, 2016.

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

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to David Kaiser, 603–862–2719 or [David.Kaiser@noaa.gov](mailto:David.Kaiser@noaa.gov).



**SUPPLEMENTARY INFORMATION:****I. Abstract**

This request is for extension of a currently approved information collection.

A number of paperwork submissions are required by the Coastal Zone Management Act (CZMA) federal consistency provision, 16 U.S.C. 1456, and by NOAA to provide a reasonable, efficient and predictable means of complying with CZMA requirements. The requirements are detailed in 15 CFR part 930. The information will be used by coastal states with federally-approved Coastal Zone Management Programs to determine if Federal agency activities, Federal license or permit activities, and Federal assistance activities that affect a state's coastal zone are consistent with the states' programs. Information will also be used by NOAA and the Secretary of Commerce for appeals to the Secretary by non-federal applicants regarding State CZMA objections to federal license or permit activities.

**II. Method of Collection**

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

**III. Data**

*OMB Control Number:* 0648-0411.

*Form Number:* None.

*Type of Review:* Regular submission (extension of a currently approved collection).

*Affected Public:* State, local, or tribal government; business or other for-profit organizations; individuals or households.

*Estimated Number of Respondents:* 2,334.

*Estimated Time per Response:* Applications/certifications and state preparation of objection or concurrence letters, 8 hours each; state requests for review of unlisted activities, 4 hours; public notices, 1 hour; remedial action and supplemental review, 6 hours; listing notices, 1 hour; interstate listing notices, 30 hours; mediation, 2 hours; appeals to the Secretary of Commerce, 210 hours.

*Estimated Total Annual Burden Hours:* 35,799.

*Estimated Total Annual Cost to Public:* \$9,024 in recordkeeping/reporting costs.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

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

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

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2016-13034 Filed 6-1-16; 8:45 am]

**BILLING CODE 3510-08-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

**RIN 0648-XE659**

**Pacific Fishery Management Council (Pacific Council); Public Meetings**

**AGENCY:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council (Pacific Council) and its advisory entities will hold public meetings.

**DATES:** The Pacific Council and its advisory entities will meet June 21-28, 2016. The Pacific Council meeting will begin on Thursday, June 23, 2016 at 8 a.m., reconvening each day through Tuesday, June 28, 2016. All meetings are open to the public, except a closed session will be held from 8 a.m. to 12 p.m. on Thursday, June 23 and 8 a.m. to 9 a.m. on Tuesday, June 28 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

**ADDRESSES:** Meetings of the Council and its advisory entities will be held at the Hotel Murano, 1320 Broadway Plaza, Tacoma, WA 98402; telephone: (253) 238-8000.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220. Instructions for attending the

meeting via live stream broadcast are given under **SUPPLEMENTARY INFORMATION**, below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chuck Tracy, Acting Executive Director; telephone: (503) 820-2280 or (866) 806-7204 toll-free; or access the Pacific Council Web site, <http://www.pcouncil.org> for the current meeting location, proposed agenda, and meeting briefing materials.

**SUPPLEMENTARY INFORMATION:** The June 23-28, 2016 meeting of the Pacific Council will be streamed live on the Internet. The broadcasts begin initially at 1 p.m. Pacific Time (PT) Thursday, June 23, 2016 and continue at 8 a.m. daily through Tuesday, June 28, 2016. Broadcasts end daily at 6 p.m. PT or when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion is listen-only; you will be unable to speak to the Pacific Council via the broadcast. To access the meeting online please use the following link: <http://www.gotomeeting.com/online/webinar/join-webinar> and enter the June Webinar ID, 157-423-659 and your email address. You can attend the webinar online using a computer, tablet, or smart phone, using the GoToMeeting application. It is recommended that you use a computer headset to listen to the meeting, but you may use your telephone for the audio portion only of the meeting. The audio portion may be attended using a telephone by dialing the toll number 1-562-247-8422 (not a toll-free number), audio access code 409-877-303, and enter the audio pin shown after joining the webinar.

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as "Final Action" refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the Secretary of Commerce, under sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, advisory entity meeting times, and meeting rooms are described in Agenda Item A.4, Proposed Council Meeting Agenda, and will be in the advance June 2016 briefing materials and posted on the Council Web site at [www.pcouncil.org](http://www.pcouncil.org).

**A. Call to Order**

1. Opening Remarks
2. Roll Call
3. Acting Executive Director's Report
4. Approve Agenda

**B. Open Comment Period**

1. Comments on Non-Agenda Items

**C. Habitat**

1. Current Habitat Issues

**D. Highly Migratory Species Management**

1. National Marine Fisheries Service Report
2. International Issues Including Eastern Pacific Ocean Swordfish Status, Report of the North Pacific Albacore Management Strategy Evaluation Workshop, and Recommendations for the 12th Northern Committee Meeting
3. Preliminary Approval of New Exempted Fishing Permits (EFPs)
4. Initial Scoping of Biennial Specifications Including Management Reference Points and Management Measures
5. Deep-Set Buoy Gear and Federal Permit Update

**E. Pacific Halibut Management**

1. Scoping of Pacific Halibut Catch Sharing Plan Allocation Changes

**F. Administrative Matters**

1. Legislative Matters
2. Western Region Climate Change Action Plan
3. Fiscal Matters
4. Approval of Council Meeting Record
5. Membership Appointments and Council Operating Procedures
6. Future Council Meeting Agenda and Workload Planning

**G. Groundfish Management**

1. National Marine Fisheries Service Report
2. Amendment 21 At-Sea Sector Allocation Revisions
3. Final Action on Exempted Fishing Permit Approval for 2017–2018
4. Final Action To Adopt Management Measures for 2017–2018 Fisheries
5. Preliminary Plans for Review of the West Coast Trawl Catch Share Program and Intersector Allocations Including Comments on Draft Guidance for Catch Share Program Revisions
6. Omnibus Groundfish Workload Planning
7. Final Action on Inseason Adjustments
8. Final Action on Stock Assessment Plans and Terms of Reference (TOR) for Groundfish and Coastal Pelagic Species
9. Final Action on Trawl Catch Share Program Gear Use Regulations for Fishing and Multiple Management Areas

**H. Salmon Management**

1. Sacramento River Winter Chinook Harvest Control Rule Update

**Advisory Body Agendas**

Advisory body agendas will include discussions of relevant issues that are on the Council agenda for this meeting, and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Council Web site <http://www.pcouncil.org/council-operations/council-meetings/current-briefing-book/> no later than Thursday, June 9, 2016.

**Schedule of Ancillary Meetings**

*Day 1—Tuesday, June 21, 2016*

Highly Migratory Species Advisory Subpanel 8 a.m.  
Highly Migratory Species Management Team 8 a.m.

*Day 2—Wednesday, June 22, 2016*

Groundfish Management Team 8 a.m.  
Highly Migratory Species Advisory Subpanel 8 a.m.  
Highly Migratory Species Management Team 8 a.m.  
Scientific and Statistical Committee 8 a.m.  
Habitat Committee 8:30 a.m.  
Budget Committee 1 p.m.  
Groundfish Advisory Subpanel 1 p.m.  
Legislative Committee 2:30 p.m.

*Day 3—Thursday, June 23, 2016*

California State Delegation 7 a.m.  
Oregon State Delegation 7 a.m.  
Washington State Delegation 7 a.m.  
Highly Migratory Species Advisory Subpanel 8 a.m.  
Highly Migratory Species Management Team 8 a.m.  
Groundfish Advisory Subpanel 8 a.m.  
Groundfish Management Team 8 a.m.  
Scientific and Statistical Committee 8 a.m.  
Enforcement Consultants 3 p.m.

*Day 4—Friday, June 24, 2016*

California State Delegation 7 a.m.  
Oregon State Delegation 7 a.m.  
Washington State Delegation 7 a.m.  
Groundfish Advisory Subpanel 8 a.m.  
Groundfish Management Team 8 a.m.  
Enforcement Consultants Ad hoc

*Day 5—Saturday, June 25, 2016*

California State Delegation 7 a.m.  
Oregon State Delegation 7 a.m.  
Washington State Delegation 7 a.m.  
Groundfish Advisory Subpanel 8 a.m.  
Groundfish Management Team 8 a.m.  
Enforcement Consultants Ad hoc

*Day 6—Sunday, June 26, 2016*

California State Delegation 7 a.m.

Oregon State Delegation 7 a.m.  
Washington State Delegation 7 a.m.  
Groundfish Advisory Subpanel 8 a.m.  
Groundfish Management Team 8 a.m.  
Enforcement Consultants Ad hoc

*Day 7—Monday, June 27, 2016*

California State Delegation 7 a.m.  
Oregon State Delegation 7 a.m.  
Washington State Delegation 7 a.m.  
Groundfish Advisory Subpanel 8 a.m.  
Groundfish Management Team 8 a.m.  
Enforcement Consultants Ad hoc

*Day 8—Tuesday, June 28, 2016*

California State Delegation 7 a.m.  
Oregon State Delegation 7 a.m.  
Washington State Delegation 7 a.m.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council 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 Fishery Conservation and Management 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 Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: May 27, 2016.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016–13018 Filed 6–1–16; 8:45 am]

**BILLING CODE 3510–22–P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

**RIN 0648–XE660**

**Gulf of Mexico 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 Gulf of Mexico Fishery Management Council (Council) will hold a five-day meeting to consider actions affecting the Gulf of Mexico

fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will take place on Monday, June 20 through Friday, June 24, 2016, starting at 8:30 a.m. daily.

**ADDRESSES:** The meeting will be held at the Hilton Clearwater Beach hotel, located at 400 Mandalay Avenue, Clearwater, FL 33767; telephone: (727) 461-3222.

*Council address:* Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348-1630.

**FOR FURTHER INFORMATION CONTACT:** Douglas Gregory, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630.

**SUPPLEMENTARY INFORMATION:**

**Agenda**

*Monday, June 20, 2016; 8:30 a.m.–5:30 p.m.*

The Gulf Council will begin with updates and presentations from administrative and management committees. The Data Collection Administrative Committee will discuss the Commercial Electronic Reporting Pilot Program and Timeline Update; and review recommendations for the For-Hire Electronic Reporting Program from the Technical Committee. They will also discuss the 2016 Appropriations for Gulf of Mexico Reef Fish Research. The Outreach and Education Administrative Committee will receive a report from the Outreach and Education Technical Committee's meeting. The Gulf SEDAR Administrative Committee will review the SEDAR Steering Committee report; the Scientific and Statistical Committees (SSC) review and recommendations on Research Track; and the SEDAR Schedule Review. After lunch, the Spiny Lobster Management Committee will review the Panel Summary; receive a summary from the Joint South Atlantic and Gulf of Mexico Fishery Management Council's Spiny Lobster Advisory Panel (AP) meeting; and a summary from the Special and Standing SSC recommendations. The Shrimp Management Committee will give an overview of Modifications to the Bycatch Reduction Device (BRD) Testing Manual; review Options in Shrimp Amendment 17B Options Document; and review of the Special and Standing SSC Recommendations. The Reef Fish Management Committee will review Draft Amendment 36A: Red Snapper Individual Fishing Quota (IFQ) Modifications; Draft Amendment 46: Modify Gray Triggerfish Rebuilding Plan; and, Framework Action Options Paper: Mutton Snapper Acceptable

Catch Limits (ACL) and Management Measures, and Commercial Gag Minimum Size Limit.

*Tuesday, June 21, 2016; 8:30 a.m.–5:30 p.m.*

The Reef Fish Management Committee will continue to review and discuss Draft Amendment 41: Red Snapper Management for Federally Permitted Charter Vessels; Draft Amendment 42: Federal Reef Fish Headboat Management. The Committee will review the Ad Hoc Reef Fish Headboat Advisory Panel Summary. The Committee will also discuss Final Action—Amendment 43: Hogfish Stock Definition, Status Determination Criteria (SDC), Annual Catch Limits (ACL) and Minimum Size Limit. The Committee will review Final Action—Amendment 45: Extend or Eliminate the Sunset Provision on Sector Separation. The Committee will discuss implementing an Ad Hoc Advisory Panel for Recreational Red Snapper Management; and review of Standing and Special SSC recommendations.

During lunch break Tuesday, June 21, 2016; 12 p.m.–1:25 p.m. the Personnel Committee will meet in Closed Session.

*Wednesday, June 22, 2016; 8:30 a.m.–5 p.m.*

The Joint Habitat/Coral Committee will receive and update on Gulf Activities Supported by NOAA Coral Reef Conservation Program; receive reports from the Deep-sea Coral Workshop, and 5-year Review Essential Fish Habitat Status. The Committee will receive updates on Recommended Coral Habitat Areas of Particular Concern (HAPCs) and receive an update on the Flower Garden Banks National Marine Sanctuary Draft Environmental Impact Statement. The Mackerel Management Committee will review Options Paper—CMP Amendment 29: Allocation Sharing and Accountability Measures for Gulf King Mackerel, and Options Paper—Framework Amendment 5: Modifications to Commercial King Mackerel Permit Restrictions in the Gulf.

The Full Council will convene after lunch (1:15 p.m.) with a Call to Order, Announcements and Introductions; Adoption of Agenda and Approval of Minutes; and will review Exempt Fishing Permit (EFPs) Applications, if any. The Council will receive public testimony from 1:45 p.m. until 5 p.m. on Agenda Testimony Items: Final Action—Reef Fish Amendment 43: Hogfish Stock Definition, Status Determination Criteria, Annual Catch Limit, and Minimum Size Limit; Final Action—Reef Fish Amendment 45:

Extend or Eliminate the Sunset Provision; and hold an open public testimony period regarding any other fishery issues or concern. Anyone wishing to speak during public comment should sign in at the registration station located at the entrance to the meeting room.

*Thursday, June 23, 2016; 8:30 a.m.–5 p.m.*

The Council will receive presentations on U.S. Fish and Wildlife Foundation Restoration Activities; the Florida RESTORE Act Centers of Excellence Program; Joint Law Enforcement; Draft Gulf of Mexico Climate Science Action Plan and Draft Comment Letter and, NMFS—SERO Landing Summaries. The Council will also receive a summary from the Council Coordination Committee meeting.

The Council will receive committee reports from the Shrimp and Spiny Lobster Management Committees. After lunch, the Council will receive committee reports from the Data Collection, Outreach and Education, Joint Habitat/Coral, Reef Fish Management Committees.

*Friday, June 24, 2016; 8:30 a.m.–11:30 a.m.*

The Council will continue to review and discuss committee reports as follows: Mackerel, Gulf SEDAR, and Personnel Committee; and, vote on Exempted Fishing Permits (EFP) applications, if any. The Council will receive Supporting Agencies Summary Reports from the South Atlantic Council; Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; and, the Department of State.

Lastly, Other Business, if any.

**Meeting Adjourns**

The timing and order in which agenda items are addressed may change as required to effectively address the issue. The latest version will be posted on the Council's file server, which can be accessed by going to the Council's Web site at <http://www.gulfcouncil.org> and clicking on FTP Server under Quick Links. For meeting materials, select the "Briefing Books/Briefing Book 2016–06" folder on Gulf Council file server. The username and password are both "gulfguest". The meetings will be webcast over the Internet. A link to the webcast will be available on the Council's Web site, <http://www.gulfcouncil.org>.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those

issues may not be the subjects of formal action during this meeting. Council 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 that 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 Kathy Pereira (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 27, 2016.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016-13017 Filed 6-1-16; 8:45 am]

**BILLING CODE 3510-22-P**

## COMMODITY FUTURES TRADING COMMISSION

### Notice of Proposed Order and Request for Comment on a Proposal To Exempt, Pursuant to the Authority in Section 4(c) of the Commodity Exchange Act, the Federal Reserve Banks From Sections 4d and 22 of the Commodity Exchange Act

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed order and request for comment.

**SUMMARY:** The Commodity Futures Trading Commission ("CFTC" or "Commission") is proposing to permit Federal Reserve Banks to hold money, securities, and property deposited into a customer account by a systemically important derivatives clearing organization in accordance with the standards to which Federal Reserve Banks are held, as specified below. Thus, the Commission is proposing to exempt Federal Reserve Banks that provide customer accounts and other services to systemically important derivatives clearing organizations from Sections 4d and 22 of the Commodity Exchange Act ("CEA" or the "Act").

**DATES:** Comments must be received by July 5, 2016.

**ADDRESSES:** You may submit comments by any of the following methods:

- *CFTC Web site:* <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Comments Online process on the Web site.

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in § 145.9 of the Commission's regulations, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this action will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Eileen A. Donovan, Deputy Director, 202-418-5096, [edonovan@cftc.gov](mailto:edonovan@cftc.gov); M. Laura Astrada, Associate Director, 202-418-7622, [lastrada@cftc.gov](mailto:lastrada@cftc.gov); or Parisa Abadi, Attorney-Advisor, 202-418-6620, [pabadi@cftc.gov](mailto:pabadi@cftc.gov), in each case, at the Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; or Joe Opron, Special Counsel, 312-596-0653, [jopron@cftc.gov](mailto:jopron@cftc.gov), Division of Clearing and Risk, Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, IL 60661.

### SUPPLEMENTARY INFORMATION:

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### I. Introduction

In 2013, in response to significant segregated account shortfalls experienced by futures customers, the Commission adopted rules that aimed to improve the protection of customer funds.<sup>1</sup> Recognizing that such protection is critical to the sound functioning of the futures and swaps markets, the Commission reiterated that money, securities, and other property deposited by customers must be carefully safeguarded and segregated at all times.

That same year, the Commission adopted enhanced risk management standards<sup>2</sup> and additional requirements for compliance with the derivatives clearing organization ("DCO") core principles set forth in the CEA<sup>3</sup> for DCOs that are designated as systemically important ("SIDCOs") by the Financial Stability Oversight Council.<sup>4</sup> The Commission adopted these requirements in part because of the critical role SIDCOs play in fostering

<sup>1</sup> Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 FR 68506 (Nov. 14, 2013).

<sup>2</sup> Enhanced Risk Management Standards for Systemically Important Derivatives Clearing Organizations, 78 FR 49663 (Aug. 15, 2013).

<sup>3</sup> See Section 5b(c)(2) of the CEA; see also Derivatives Clearing Organizations and International Standards, 78 FR 72476 (Dec. 2, 2013).

<sup>4</sup> Under Commission Regulation 39.2, a SIDCO is defined as a financial market utility that is a registered DCO under Section 5b of the Act, which has been designated by the Financial Stability Oversight Council to be systemically important and for which the Commission acts as the Supervisory Agency pursuant to Section 803(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). 17 CFR 39.2. "Supervisory Agency" is defined as the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws. Section 803(8)(A) of the Dodd-Frank Act, Public Law 111-203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act is available at [http://www.cftc.gov/idc/groups/public/@swaps/documents/file/hr4173\\_enrolledbill.pdf](http://www.cftc.gov/idc/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf).

financial stability<sup>5</sup> and because the “failure of a SIDCO to complete core clearing and settlement functions within a rapid period could create systemic liquidity and credit dislocations on a global scale.”<sup>6</sup> Accordingly, these additional requirements were designed to promote a SIDCO’s financial strength, operational integrity, security, and reliability.<sup>7</sup> By requiring a SIDCO’s liquidity arrangements to be highly reliable in stressed market conditions, the Commission sought to bolster a SIDCO’s ability to promptly meet its cash obligations to its members in order to help avoid the loss of market confidence and cascading defaults.<sup>8</sup>

Title VIII of the Dodd-Frank Act, entitled “Payment, Clearing, and Settlement Supervision Act of 2010,”<sup>9</sup> also included provisions aimed at safeguarding the U.S. financial system. One example of this is Section 806(a), which expressly permits the Board of Governors of the Federal Reserve System (“Board”) to authorize a Federal Reserve Bank to establish and maintain a deposit account for a SIDCO and provide certain services to the SIDCO, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.<sup>10</sup>

The Commission believes that establishing SIDCO segregated customer accounts at a Federal Reserve Bank and enabling SIDCOs to access related services there would both augment a SIDCO’s liquidity arrangements and enhance the protection of customer funds.<sup>11</sup> The Commission recognizes, however, that Section 4d of the CEA was not developed with a particular focus on the Federal Reserve Banks.<sup>12</sup> As a result, the unique role that the Federal Reserve Banks play in the financial system was not expressly taken into account when the Commission’s standard of liability was developed for depositories. The Commission notes that Federal Reserve financial services provided by the Federal Reserve Banks are governed by the terms and conditions that are set forth in various federal rules, Federal Reserve Board policies, and Federal Reserve Bank operating circulars, which have been carefully developed over several decades. The Commission further recognizes that the Federal

Reserve Banks could be exposed to liability under Sections 4d and 22<sup>13</sup> of the CEA, which could have disparate impact on the treatment of deposits at the Federal Reserve Banks and ultimately harm U.S. taxpayers. Accordingly, to facilitate SIDCOs’ use of Federal Reserve Banks as depositories for customer funds, the Commission is proposing, pursuant to its authority under Section 4(c) of the CEA, to exempt Federal Reserve Banks that provide customer accounts and other services to SIDCOs from Sections 4d and 22 of the CEA.<sup>14</sup> The exemption would enable the Federal Reserve Banks to maintain SIDCO customer accounts in accordance with the standards set forth in the relevant Federal Reserve Bank governing documents, as specified below.

## II. Background

### A. Customer Protection

The protection of customers—and the safeguarding of money, securities, or other property deposited by customers—is a fundamental component of the regulatory and oversight framework of the futures and swaps markets. Section 4d of the CEA requires a futures commission merchant (“FCM”) to segregate from its own assets all money, securities, and other property deposited by futures or cleared swaps customers to margin, secure, or guarantee futures contracts and options on futures contracts traded on designated contract markets, and cleared swaps. Section 4d further requires an FCM to treat customer funds as belonging to the customer, and prohibits an FCM from using the funds deposited by a customer to margin or extend credit to any person other than the customer that deposited the funds. Similarly, Section 4d of the CEA prohibits a DCO and any depository that has received such funds from holding, disposing of, or using such funds as belonging to the depositing FCM or any person other than the customers of such FCM.

The importance of this statutory mandate to protect customer funds—to treat them as belonging to customers and not use the funds inappropriately—was reinforced in light of the FCM insolvency proceedings involving MF Global, Inc. (“MF Global”) and Peregrine Financial Group, Inc.

(“Peregrine”). In October 2011, MF Global, which was dually-registered as an FCM with the Commission and as a securities broker-dealer with the U.S. Securities and Exchange Commission, was placed into a liquidation proceeding under the Securities Investor Protection Act by the Securities Investor Protection Corporation. At the time, the trustee appointed to oversee the liquidation of MF Global reported a potential \$900 million shortfall of funds necessary to repay the account balances due to customers trading futures on designated contract markets, and an approximately \$700 million shortfall in funds immediately available to repay the account balances of customers trading on foreign futures markets. The shortfall in customer segregated accounts was attributed by the MF Global trustee to significant transfers of funds out of the customer accounts that were used by MF Global, Inc. for various purposes other than to meet obligations to or on behalf of customers.<sup>15</sup>

Shortly thereafter, in 2012, the Commission filed a civil injunctive complaint in federal district court against Peregrine and its Chief Executive Officer and sole owner, Russell R. Wasendorf, Sr. (“Wasendorf”), alleging that Peregrine and Wasendorf misappropriated customer funds, violated customer fund segregation laws, and made false statements regarding the amount of funds in customer segregated accounts in financial statements filed with the Commission. According to the complaint, Peregrine falsely represented that it held in excess of \$220 million of customer funds, when it actually held only approximately \$5.1 million.<sup>16</sup> Spurred in part by these shocking failures, the Commission promulgated several rules aimed at strengthening the protection of customer funds and the U.S. financial markets.<sup>17</sup>

In an effort to further strengthen customer protection, the Commission has also examined the current

<sup>15</sup> See *Report of the Trustee’s Investigation and Recommendations, In re MF Global, Inc.*, No. 11–2790 (MG) SIPA (Bankr. S.D.N.Y. Jun. 4, 2012). Customer claims were eventually paid in full after customer funds were recovered through bankruptcy proceedings and the Commission’s enforcement action.

<sup>16</sup> See Complaint, *U.S. Commodity Futures Trading Commission v. Peregrine Financial Group, Inc., and Russell R. Wasendorf, Sr.*, No. 12–cv–5383 (N.D. Ill. July 10, 2012).

<sup>17</sup> See discussion *supra* Part I; see also, e.g., Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 FR 78776 (Dec. 19, 2011) (revising the types of investments that an FCM or DCO could make with customer funds under Regulation 1.25 to minimize the exposure of such funds to liquidity, credit, and market risks).

<sup>5</sup> See, e.g., 78 FR at 49672.

<sup>6</sup> *Id.* at 49674.

<sup>7</sup> See *id.* at 49668–49669; see also 78 FR at 72509.

<sup>8</sup> See 78 FR at 72509.

<sup>9</sup> Section 801 of the Dodd-Frank Act.

<sup>10</sup> See Section 806(a) of the Dodd-Frank Act.

<sup>11</sup> See discussion *infra* Part VI.

<sup>12</sup> Section 4d of the CEA permits customer funds to be deposited with a bank, trust company, or DCO. 7 U.S.C. 6d.

<sup>13</sup> As discussed in further detail below, Section 22 of the CEA would typically provide for private rights of action for damages against persons who violate Section 4d, or persons who willfully aid, abet, counsel, induce, or procure the commission of a violation of Section 4d. See discussion *supra* Part VI.

<sup>14</sup> 7 U.S.C. 6(c); 7 U.S.C. 25.

regulatory framework through a series of roundtables and other public meetings. The Commission held a public roundtable to solicit input on customer protection issues from a broad cross-section of the derivatives industry, including market participants, FCMs, DCOs, self-regulatory organizations, securities regulators, and academics.<sup>18</sup> The Commission also hosted a public meeting of the Technology Advisory Committee to discuss potential technological solutions directed at enhancing the protection of customer funds.<sup>19</sup>

Customer protection continues to be a bedrock guiding principle for the Commission, as the protection of customer funds is paramount to a trusted marketplace.

### *B. Designation of Financial Market Utilities Under Title VIII of the Dodd-Frank Act*

Title VIII of the Dodd-Frank Act was enacted to mitigate risk in the financial system and promote financial stability.<sup>20</sup> Accordingly, Section 804 of the Dodd-Frank Act requires the Financial Stability Oversight Council (“Council”)<sup>21</sup> to designate those financial market utilities (“FMUs”) that the Council determines are, or are likely to become, systemically important.<sup>22</sup> An FMU includes any person that manages

<sup>18</sup> Further information on the public roundtable, including video recordings and transcripts of the discussions, are available on the Commission’s Web site. See [http://www.cftc.gov/PressRoom/Events/opaevent\\_cftcstaff022912](http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff022912) (relating to Feb. 29, 2012); [http://www.cftc.gov/PressRoom/Events/opaevent\\_cftcstaff030112](http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff030112) (relating to Mar. 1, 2012).

<sup>19</sup> Additional information, including documents submitted by meeting participants, is available on the Commission’s Web site. See [http://www.cftc.gov/PressRoom/Events/opaevent\\_tac072612](http://www.cftc.gov/PressRoom/Events/opaevent_tac072612).

<sup>20</sup> See Section 802(b) of the Dodd-Frank Act.

<sup>21</sup> The Council was established by Section 111 of the Dodd-Frank Act. In general, the Council is tasked with identifying risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace, promoting market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure, and responding to emerging threats to the stability of the United States financial system. Section 112(a)(1) of the Dodd-Frank Act.

<sup>22</sup> See Section 804(a) of the Dodd-Frank Act. The term “systemically important” means a situation where the failure of or a disruption to the functioning of a financial market utility could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States. Section 803(9) of the Dodd-Frank Act; see also Authority to Designate Financial Market Utilities as Systemically Important, 76 FR 44763, 44774 (July 27, 2011).

or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.<sup>23</sup> As noted by the Council, FMUs are vital to the nation’s financial infrastructure, and “their smooth operation is integral to the soundness of the financial system and the overall economy.”<sup>24</sup>

In determining whether an FMU is systemically important, the Council follows a detailed two-stage designation process, using statutory considerations<sup>25</sup> and other metrics to assess, among other things, “whether possible disruptions [to the functioning of an FMU] are potentially severe, not necessarily in the sense that they themselves might trigger damage to the U.S. economy, but because such disruptions might reduce the ability of financial institutions or markets to perform their normal intermediation functions.”<sup>26</sup> Thus, if a systemically important FMU fails to perform, this failure could pose significant risk to its participants and to the U.S. financial system more broadly. For example, if a systemically important FMU fails to complete timely settlement, there could be significant credit and/or liquidity problems for its participants and participants’ customers. On July 18, 2012, the Council designated eight FMUs as systemically important under Title VIII.<sup>27</sup> Two of these designated FMUs, Chicago Mercantile Exchange, Inc. and ICE Clear Credit LLC, are SIDCOs.

### *C. Access to Federal Reserve Bank Accounts and Services*

As noted above, Section 806(a) of the Dodd-Frank Act permits the Board to authorize a Federal Reserve Bank to establish and maintain an account for a SIDCO and provide to the SIDCO the

<sup>23</sup> Section 803(6)(A) of the Dodd-Frank Act.

<sup>24</sup> 76 FR at 44763.

<sup>25</sup> Under Section 804(a)(2) of the Dodd-Frank Act, in determining whether an FMU is or is likely to become systemically important, the Council must take into consideration the following: (A) The aggregate monetary value of transactions processed by the FMU; (B) the aggregate exposure of the FMU to its counterparties; (C) the relationship, interdependencies, or other interactions of the FMU with other FMUs or payment, clearing, or settlement activities; (D) the effect that the failure of or a disruption to the FMU would have on critical markets, financial institutions, or the broader financial system; and (E) any other factors the Council deems appropriate.

<sup>26</sup> 76 FR at 44766.

<sup>27</sup> See Press Release, Financial Stability Oversight Council, Financial Stability Oversight Council Makes First Designations in Effort to Protect Against Future Financial Crises (July 18, 2012), available at <http://www.treasury.gov/press-center/press-releases/Pages/tg1645.aspx>.

services listed in Section 11A(b) of the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.<sup>28</sup> In adopting regulations pursuant to Section 806(a) of the Dodd-Frank Act, the Board noted that the “terms and conditions for access to Federal Reserve Bank accounts and services are intended to facilitate the use of [Federal] Reserve Bank accounts and services by a designated FMU in order to reduce settlement risk and strengthen settlement processes, while limiting the risk presented by the designated FMU to the [Federal] Reserve Banks.”<sup>29</sup> Accordingly, the Board “expects that [Federal] Reserve Banks would provide services that are consistent with a designated FMU’s need for safe and sound settlement processes under account and service agreements generally consistent with the provisions of existing [Federal] Reserve Bank operating circulars for such services.”<sup>30</sup> Highlighting the importance of Federal Reserve Bank operating circulars in this regard, the Board further requires that designated FMUs be in compliance with existing operating circulars.<sup>31</sup>

## **III. Standards of Depository Liability**

### *A. Depository Liability Under Section 4d of the CEA*

Under Section 4d of the CEA, a depository, which may be a bank, trust company, or a DCO, will be held liable for the improper transfers of customer funds by an FCM or DCO if it knew or should have known that the transfer was improper.<sup>32</sup> While a depository has no affirmative obligation to police or monitor an FCM or DCO account holder’s compliance with the CEA or Commission regulations, a depository cannot ignore signs of wrongdoing.<sup>33</sup>

To ensure that a depository that holds customer funds has been informed that

<sup>28</sup> The services listed in Section 11A(b) of the Federal Reserve Act include wire transfers, settlement, and securities safekeeping, as well as services regarding currency and coin, check clearing and collection, and automated clearing house transactions. See 12 U.S.C. 248a(b). Section 806(a) of the Dodd-Frank Act also permits the Board to authorize a Federal Reserve Bank to establish deposit accounts under the first undesignated paragraph of Section 13 of the Federal Reserve Act, 12 U.S.C. 342.

<sup>29</sup> Financial Market Utilities (Regulation HH), 78 FR 14024, 14025 (Mar. 4, 2013).

<sup>30</sup> *Id.*

<sup>31</sup> See 12 CFR 234.5(b)(2) (setting forth rules to govern Federal Reserve Bank accounts held by designated FMUs).

<sup>32</sup> See CFTC Interpretative Letter No. 79–1, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,835 (May 29, 1979). Section 4d of the CEA covers customer funds only; it does not relate to proprietary funds of clearing members.

<sup>33</sup> See 78 FR at 68539.

the deposited funds are those of customers being held in accordance with Section 4d of the CEA, the Commission requires an FCM or DCO to obtain from each depository with which it deposits customer funds a written acknowledgment in this regard.<sup>34</sup> Commission regulations require FCMs and DCOs to use a template acknowledgment letter in order to promote a uniform understanding among FCMs, DCOs, and depositories as to their obligations under the CEA and Commission regulations with respect to the proper treatment of customer funds. The template acknowledgment letter contains a provision that reflects the Commission's expectation that a depository will engage in its customary practices and will be held liable for a violation of Section 4d if it knew or should have known of the violation.<sup>35</sup>

It is important to note that as the aforementioned standard of liability was developed, the unique nature of the Federal Reserve Banks was not taken into account. Indeed, until recently, there was no statutory authority permitting a SIDCO to hold customer funds at a Federal Reserve Bank. However, and as discussed below, the standard of liability for Federal Reserve Banks acting as depositories has been carefully developed by the Board and not the Commission.

#### *B. Federal Reserve Bank Liability Under Federal Reserve Bank Governing Documents*

The Federal Reserve System, which serves as the nation's central bank, was created by an act of Congress in 1913. The Federal Reserve System consists of a seven member Board, and twelve Federal Reserve Banks. The Federal Reserve Banks operate under the general supervision of the Board, although each Bank has a Board of Directors that oversees its operations. Federal Reserve Banks generate their own income, which is generally from interest earned on U.S. government securities that are acquired in the course of Federal Reserve monetary policy actions and from the provision of priced services to depository institutions. Federal Reserve Banks do not, however, operate for a profit. Indeed, each year they return to the U.S. Department of Treasury all earnings in excess of Federal Reserve Bank operating and other expenses. Federal Reserve Banks are, in essence, the operating arms of the United States' central banking system. In addition to their many responsibilities, Federal

Reserve Banks operate as a bank for depository institutions and the U.S. government.<sup>36</sup>

Some of the services provided by Federal Reserve Banks include the provision of funds and book-entry securities accounts, as well as certain financial services, such as wire transfers, book-entry securities transfers, and multilateral settlement services. These accounts and services are governed by account agreements, operating circulars issued by Federal Reserve Banks for each service, the Federal Reserve Act, and Federal Reserve regulations and policies, and, with respect to book-entry securities services, the regulations of the domestic issuer of the securities or the issuer's regulator ("Federal Reserve Bank Governing Documents").<sup>37</sup> Additionally, one or more Federal Reserve Banks have established proprietary accounts for SIDCOs<sup>38</sup> pursuant to Section 806 of the Dodd-Frank Act. These proprietary accounts are also governed by the Federal Reserve Bank Governing Documents.

The Federal Reserve Banks' standard of liability for the financial services it offers to depository institutions has been developed over the 100-plus years of Federal Reserve Bank operations, in many cases hand-in-hand with the development of federal and state statutory and regulatory provisions, as well as common law governing securities transfers, funds transfers, and other payment mechanisms. The operating circulars of the Federal Reserve Banks began having uniform terms and conditions across Federal Reserve Bank districts as of January 2, 1998. The 1998 version of the uniform Operating Circular 1 (Account Relationships) sets out the Federal Reserve Banks' standard and scope of liability that limits a Federal Reserve Bank's liability to only damages suffered by the account holder that are caused by the Federal Reserve Bank's failure to

<sup>36</sup> For example, Federal Reserve Banks provide checking accounts for the U.S. Department of Treasury, issue and redeem U.S. government securities, and act in other ways as a fiscal agent for the U.S. government. See Federal Reserve Board, The Structure of the Federal Reserve System (Apr. 17, 2009), <http://www.federalreserve.gov/pubs/frseries/frseri3.htm>.

<sup>37</sup> See, e.g., Federal Reserve Bank Operating Circular No. 6 (governing funds transfers through the Fedwire Funds Service); Federal Reserve Bank Operating Circular No. 7 (governing the maintenance of and transfer services for book-entry securities accounts); 12 CFR part 210, subpart B (governing funds transfers through the Fedwire Funds Service); 31 CFR part 357, subpart B (setting forth the Department of the Treasury's regulations governing book-entry treasury bonds, notes, and bills).

<sup>38</sup> A SIDCO's proprietary account holds the proprietary funds of its clearing members.

exercise ordinary care, and does not include lost profits, claims by third parties, or consequential or incidental damages.<sup>39</sup>

The Commission understands that, in accordance with the Federal Reserve Bank Governing Documents, the Federal Reserve Banks are authorized to act on the instructions received through the use of procedures agreed upon with the account holders, without any liability or obligation to inquire as to the legitimacy or accuracy of the instruction or the transaction. By agreement with the respective account holders, the procedures for accepting an instruction are not used to detect an error in the transmission or content of the instruction, or compliance by the account holder with its legal obligations. In addition to limiting the areas of liability, the Commission understands that the Federal Reserve Bank Governing Documents limit a Federal Reserve Bank's liability in maintaining an account or acting on such an instruction to actual damages that are incurred solely by the account holder<sup>40</sup> and that are proximately caused by the Federal Reserve Bank's failure to exercise ordinary care or act in good faith in accordance with the Federal Reserve Bank Governing Documents.

#### **IV. Features Specific to the Federal Reserve Banks**

As noted above, Federal Reserve Banks play a unique role in the U.S. banking and payment system as compared to commercial banks and other depositories and payment service providers.<sup>41</sup> The standards set forth in the Federal Reserve Bank Governing Documents are reflective of this unique role and have been developed over the years to capture the distinctive nature of

<sup>39</sup> See Federal Reserve Board, Financial Services, <https://web.archive.org/web/19990125095428/http://www.frbsservices.org/> (last visited Apr. 28, 2016). Prior to 1998, each Federal Reserve Bank had its own system with different numbered operating circulars; as a result, the circular language was not necessarily uniform.

<sup>40</sup> Under the Federal Reserve Bank Governing Documents, the Federal Reserve Banks are not liable to third parties.

<sup>41</sup> Federal Reserve Banks "'are not operated for the profit of shareholders; rather, they 'were created and are operated in furtherance of the national fiscal policy.'" See *Starr Int'l Co. v. Fed. Reserve Bank of New York*, 742 F.3d 37, 40 (2d Cir. 2014) (quoting *Fed. Reserve Bank of Bos. v. Comm'r of Corps. & Taxation of the Commonwealth of Mass.*, 499 F.2d 60, 62 (1st Cir. 1974)). "Because Federal Reserve Banks 'conduct important governmental functions regarding' matters including the 'general fiscal duties of the United States,' they are 'instrumentalities of the federal government.'" See *id.* (quoting *Fed. Reserve Bank of St. Louis v. Metrocentre Improvement Dist. #1*, 657 F.2d 183, 185–186 (8th Cir. 1981)).

<sup>34</sup> See 17 CFR 1.20, Appendices A and B.

<sup>35</sup> See 78 FR at 68535; see also 17 CFR 1.20(g)(4)(ii).



the Federal Reserve Banks. In addition to the accounts and services that Federal Reserve Banks provide to the government and to other depository institutions, the Federal Reserve Banks supervise and examine member banks for safety and soundness. They also participate in the setting of U.S. monetary policy, an activity that is the primary responsibility of the Federal Reserve System. Moreover, in an effort to reduce U.S. taxpayer burden, Congress requires that the residual earnings of each Federal Reserve Bank be distributed to the U.S. Treasury's general fund.<sup>42</sup> In fact, the Federal Reserve Banks have sent to the U.S. Treasury approximately \$98.7 billion in residual earnings in 2014 and about \$500 billion on a cumulative basis since 2008.<sup>43</sup>

Federal Reserve Banks also do not provide financial services to businesses generally; rather, they serve only account holders authorized by statute, such as depository institutions and the U.S. government.<sup>44</sup> In addition, Federal Reserve Banks may engage in a set range of services and only with the respective account holder. As such, Federal Reserve Banks do not provide the range of related account services that a commercial bank might provide, such as offering services to executives of the account holder as an additional incentive to do business with the bank. Therefore, the Commission believes that the Federal Reserve Banks do not have the potential conflict of interest that

may arise when a commercial bank provides such services.

Moreover, Federal Reserve Banks play a distinctive, dual role with respect to SIDCOs, as they may be both account service providers and participants in the supervision of SIDCOs. Under Title VIII of the Dodd-Frank Act, the Board may participate in any Commission examination of a SIDCO and otherwise consult and share information with the Commission regarding SIDCOs. Federal Reserve Banks may be delegated authority to assist the Board in fulfilling this function.<sup>45</sup>

Further, Title VIII of the Dodd-Frank Act expressly permits the Commission and the Board to provide confidential supervisory information to, among others, the Federal Reserve Banks.<sup>46</sup> Although a Federal Reserve Bank may have access to confidential supervisory information regarding a particular SIDCO, Board staff has represented that it has a long-standing "Wall Policy" that generally prohibits, subject to the limitations contained therein, the sharing of confidential supervisory information with Federal Reserve Bank account services staff, and requires that care be exercised to avoid actual or apparent conflict between a Federal Reserve Bank's role as a provider of financial services and its role as a regulator, supervisor, and lender.<sup>47</sup> The Board has adopted certain standards regarding the organization, operations, and business practices of Federal Reserve Bank financial services which, among other things, generally prohibit Federal Reserve Bank personnel involved in day-to-day monetary policy, bank supervision, or the lending function from providing confidential information obtained in the course of their duties to Federal Reserve Bank personnel involved in day-to-day account services. In addition, the Wall Policy would generally prohibit Board supervisory staff from sharing any confidential supervisory information they receive about a SIDCO with the

Federal Reserve Bank staff responsible for managing the SIDCO's account and financial services. Accordingly, given the unique role that Federal Reserve Banks play in the U.S. financial system, Federal Reserve Bank account services staff are unlikely to face conflicts of interest that would motivate them to overlook information that would otherwise raise suspicion of wrongdoing.

#### V. Section 4(c) of the CEA

Section 4(c) of the CEA provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission, by rule, regulation, or order, after notice and opportunity for hearing, may exempt any agreement, contract, or transaction, or class thereof, including any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to, the agreement, contract, or transaction, from the contract market designation requirements of Section 4(a) of the CEA, or any other provision of the CEA other than certain enumerated provisions, if the Commission determines that the exemption would be consistent with the public interest.<sup>48</sup>

#### VI. Proposed Exemption From Sections 4d and 22 of the CEA

The Commission proposes to exempt Federal Reserve Banks that provide customer accounts and other services to SIDCOs from Sections 4d and 22 of the CEA. The Commission further proposes to permit SIDCOs to maintain customer accounts with a Federal Reserve Bank pursuant to the standard of liability set forth in the Federal Reserve Bank Governing Documents. The proposed exemption would, however, require a Federal Reserve Bank to segregate customer funds deposited by a SIDCO from the proprietary funds deposited by a SIDCO, and to reply to any request from Commission staff for confirmation of account balances or for provision of any other information regarding the SIDCO account.

As discussed above, Title VIII of the Dodd-Frank Act supports Federal Reserve Banks acting as depositories for SIDCOs. A Federal Reserve Bank, in its capacity as an instrument of the U.S. central bank, does not present the same types of risks as traditional commercial banks. Federal Reserve Banks are an integral part of the Federal Reserve System, serving the public interest and helping to maintain stability in the U.S. financial markets. Further, deposits at a Federal Reserve Bank have the lowest

<sup>42</sup> The current congressional mandate requires that Federal Reserve Banks transfer their residual earnings in excess of \$10 billion to the U.S. Treasury. See FAST Act, Pub. L. 114-94, 129 Stat. 1312 (2015). For prior congressional mandates in this regard, see, e.g., District of Columbia Appropriations Act, Pub. L. 106-113, 113 Stat. 1501 (1999) (requiring that, in fiscal year 2000, Federal Reserve Banks transfer their residual earnings in the amount of \$3,752,000,000 to the U.S. Treasury's general fund); Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat. 312 (requiring that, during fiscal years 1997 and 1998, Federal Reserve Banks transfer their residual earnings in excess of 3 percent of the total paid-in capital and surplus to the U.S. Treasury's general fund).

<sup>43</sup> See Press Release, Board of Governors of the Federal Reserve System, Reserve Bank Income and Expense Data and Transfers to the Treasury for 2014 (Jan. 9, 2015), available at <http://www.federalreserve.gov/newsevents/press/other/20150109a.htm>; Annual Report, Board of Governors of the Federal Reserve System (2014), available at <http://www.federalreserve.gov/publications/annual-report/files/2014-annual-report.pdf>.

<sup>44</sup> See, e.g., Federal Reserve Bank of Richmond, Consumer Issues and Information, available at <https://www.richmondfed.org/faqs/consumer/> (last visited Feb. 26, 2016) (stating that "Federal Reserve Banks are not authorized to open accounts for individuals; rather, only depository institutions and certain other financial entities may open an account at a Federal Reserve Bank"); see also Section 806(a) of the Dodd-Frank Act (authorizing accounts at a Federal Reserve Bank for designated FMs).

<sup>45</sup> See Federal Reserve Board, The Structure of the Federal Reserve System (Apr. 17, 2009), <http://www.federalreserve.gov/pubs/frseries/frseri3.htm> (noting that some supervisory responsibilities are delegated to the Federal Reserve Banks by the Board).

<sup>46</sup> See Section 809(e)(2) of the Dodd-Frank Act.  
<sup>47</sup> Federal Reserve's Key Policies for the Provision of Financial Services: Standards Related to Priced-Service Activities of the Federal Reserve Banks (1984), available at [http://www.federalreserve.gov/paymentsystems/pfs\\_standards.htm](http://www.federalreserve.gov/paymentsystems/pfs_standards.htm). The policy permits certain limited exceptions in cases where such disclosure fulfills an important supervisory objective, preserves the integrity of the payment mechanism, or protects the assets of the Federal Reserve Banks. In such cases, information will be provided on a need-to-know basis and only with the approval of senior management.

<sup>48</sup> 7 U.S.C. 6(c).



credit risk. The Board and, through their role in the Federal Reserve System, Federal Reserve Banks are also the source of liquidity with regard to U.S. dollar deposits. A SIDCO would, therefore, face much lower credit and liquidity risk with a deposit at a Federal Reserve Bank than it would with a deposit at a commercial bank.

Moreover, customer funds held at a Federal Reserve Bank would not be exposed to the risks associated with a commercial bank insolvency. As a result, the Commission believes that customer funds would be protected in an account held by a Federal Reserve Bank and would continue to be required to be segregated from the funds deposited in the SIDCO's proprietary account. The Commission notes that the standard of liability as set forth in the Federal Reserve Bank Governing Documents appears to be appropriate in the context of Federal Reserve Banks because this standard has been developed over the years to more appropriately reflect the unique nature of the Federal Reserve Banks. At this time, the Commission does not have any reason to believe that holding a Federal Reserve Bank to this standard would have the potential to harm futures and cleared swaps customers.

The Federal Reserve Banks would also be exempt from liability under Section 22 of the CEA. Section 22 of the CEA provides for private rights of action for damages against persons who violate the CEA, or persons who willfully aid, abet, counsel, induce, or procure the commission of a violation of the CEA.<sup>49</sup> The proposed exemption would preclude a third party from succeeding in a private right of action under Section 22 for a violation of Section 4d.<sup>50</sup> The Commission believes that an exemption from Section 22 is appropriate because, for those requirements from which the Federal Reserve Banks are exempt, it follows that there should be no claim under Section 22 of the CEA with respect to those requirements. The Commission further notes that under the Federal Reserve Bank Governing Documents, the Federal Reserve Banks

are currently insulated from third-party claims. While the Commission continues to believe that private claims empower injured parties to seek compensation for damages where the Commission lacks the resources to do so on their behalf, and the prospect of such claims serves the public interest in deterring misconduct, the Commission believes that, for the reasons discussed herein, exempting the Federal Reserve Banks from liability under Section 22 of the CEA would also serve the public interest.

Federal Reserve Banks were created and are operated in furtherance of the national interest; they are not for-profit enterprises. Moreover, as discussed above, Federal Reserve Banks return all earnings in excess of operating and other expenses to the U.S. Treasury. All such amounts transferred to the U.S. Treasury's general fund inure to the benefit of U.S. taxpayers. In this case, private claims against a Federal Reserve Bank would reduce the amount of excess earnings that could be returned to the U.S. Treasury. In the Commission's view, the benefits afforded customers by holding SIDCO customer funds at a Federal Reserve Bank exceed the benefits of preserving the ability to bring any private claims under Section 22 of the CEA.

Furthermore, the Commission recognizes that Title VIII of the Dodd-Frank Act permits a Federal Reserve Bank to have access to confidential supervisory information. Specifically, Section 809(e)(2) provides that the Board of Governors or any Supervisory Agency may provide confidential supervisory information and other information obtained under Title VIII to each other and to the Federal Reserve Banks, State financial institution supervisory agencies, and foreign financial supervisors, provided, however, that no person or entity receiving information pursuant to this section may disseminate such information to entities or persons other than those listed in this paragraph without complying with applicable law, including section 8 of the CEA (7 U.S.C. 12). By permitting the Federal Reserve Banks to receive confidential supervisory information, Congress recognized the unique role of Federal Reserve Banks in the U.S. financial system, as distinguished from the role of commercial banks and other depository institutions. The Commission further recognizes, however, that the fact that Board supervisory staff may have access to confidential supervisory information about a SIDCO could create the false perception that Federal Reserve Bank staff responsible for managing the

SIDCO's account and financial services would gain special knowledge about the SIDCO. Accordingly, and notwithstanding the Wall Policy described above, the Commission recognizes that a Federal Reserve Bank acting as a depository for customer funds could face greater scrutiny than a commercial bank acting as such. As a result, the proposed exemption would specify that: (1) Pursuant to the Wall Policy, information obtained by the Board supervisory staff during the course of supervising SIDCOs or any counterparty to a SIDCO will not be attributed by the Commission to any Federal Reserve Bank providing accounts and financial services to SIDCO account holders; and (2) a Federal Reserve Bank acting as a depository for SIDCO customer funds or otherwise providing account services to a SIDCO would continue to be held to the standard of liability set forth in the Federal Reserve Bank Governing Documents.

Finally, the unique role that the Federal Reserve Banks play in the Federal Reserve System was not expressly taken into account when the Commission's standard of liability was developed for depositories. In fact, as described above, it was the Dodd-Frank Act that, for the first time, authorized designated FMUs (including SIDCOs) that are not banks or trust companies to open deposit accounts with a Federal Reserve Bank. However, while the Federal Reserve Banks may establish deposit accounts for SIDCOs, such accounts are subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.<sup>51</sup> The Commission notes that the Board has prescribed detailed rules and standards that govern account services provided to SIDCOs by the Federal Reserve Banks.<sup>52</sup> These rules and standards have been carefully developed to provide clarity surrounding the provision of Federal Reserve financial services and to promote consistency in the treatment of deposit accounts at the Federal Reserve Banks for the benefit of the U.S. financial system. The Commission is concerned that exposing the Federal Reserve Banks to the standard of liability set forth in Section 4d of the CEA, as well as to potential third-party claims under Section 22 of the CEA, could disrupt these goals and ultimately

<sup>49</sup> 7 U.S.C. 25. By enacting Section 22, Congress provided private rights of action as a means for addressing violations of the Act as an alternative or supplement to Commission enforcement action. Specifically, Congress found that private damages actions are "critical to protecting the public and fundamental to maintaining the credibility of the futures market." H.R. Rep. No. 97-565, at 57 (1982).

<sup>50</sup> Cf. Effective Date for Swap Regulation, 76 FR 42508, 42517 (July 19, 2011) (stating that "exemptive relief would, in effect, preclude a person from succeeding in a private right of action under CEA section 22(a)"). However, for the avoidance of doubt, the Commission believes that an express exemption from Section 22 of the CEA for the Federal Reserve Banks is appropriate.

<sup>51</sup> See Section 806(a) of the Dodd-Frank Act.

<sup>52</sup> See 12 CFR 234.5 (setting forth the conditions and requirements for Federal Reserve Banks to open and maintain accounts for and provide financial services to designated FMUs); see also discussion *supra* Part III.B (discussing the Federal Reserve Bank Governing Documents).

harm the U.S. financial system and, by extension, U.S. taxpayers.

For the reasons discussed above, the Commission believes that the proposed exemption would promote the safeguarding of futures and cleared swaps customer funds in a manner that would also benefit U.S. taxpayers. In light of the foregoing, the Commission believes the proposed exemption would promote responsible economic and financial innovation and fair competition, and would be consistent with the “public interest,” as that term is used in Section 4(c) of the CEA.

## VII. Related Matters

### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) <sup>53</sup> requires that agencies consider whether the proposed exemption will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. The Commission believes that the proposed exemption will not have a significant economic impact on a substantial number of small entities. The exemption proposed by the Commission will impact SIDCOs and Federal Reserve Banks. The Commission has previously established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its actions on small entities in accordance with the RFA.<sup>54</sup> The Commission has previously determined that DCOs, including SIDCOs, are not small entities for purposes of the RFA.<sup>55</sup> Similarly, the Commission believes that Federal Reserve Banks are not small entities for purposes of the RFA.

Accordingly, the Commission does not expect the proposed exemption to have a significant impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed exemption would not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on whether the entities covered by this proposed exemption should be considered small entities for purposes of the RFA, and, if so, whether there is a significant impact on a substantial number of small entities.

### B. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (“PRA”) <sup>56</sup> are, among other things, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across the government. The PRA applies to all information, “regardless of form or format,” whenever the government is “obtaining, causing to be obtained [or] soliciting” information, and requires “disclosure to third parties or the public, of facts or opinions,” when the information collection calls for “answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.” The PRA would not apply in this case given that the exemption would not impose any new recordkeeping or information collection requirements, or other collections of information on ten or more persons that require approval of the Office of Management and Budget.

### C. Cost and Benefit Considerations

#### 1. Costs

The proposed exemption would exempt the Federal Reserve Banks from Sections 4d and 22 of the CEA. The Commission recognizes that such relief could represent a cost to a SIDCO, its FCM clearing members, and the FCMs’ customers in the event of a loss of the deposited customer funds. For instance, if customer funds were lost due to the fault of a Federal Reserve Bank, the SIDCO, FCM clearing member, or customer would not have a cause of action under the CEA. Rather, as discussed above, the Federal Reserve Banks would be held to the standard of liability set forth in the Federal Reserve Bank Governing Documents.<sup>57</sup> This cost, however, will never be realized if an incident does not occur. Therefore, given the resilience of the Federal Reserve Banks and the standards set forth in the Federal Reserve Bank Governing Documents, the Commission estimates that the circumstances that may give rise to such costs would be remote. Similarly, as discussed above, while the Commission continues to believe that private claims empower injured parties to seek compensation for damages where the Commission lacks the resources to do so on their behalf, and the prospect of such claims serves

the public interest in deterring misconduct, the Commission believes that, for the reasons discussed herein, exempting the Federal Reserve Banks from liability under Section 22 of the CEA would also serve the public interest. The Commission further believes that the condition in the proposed exemption that would require Federal Reserve Banks to segregate customer funds deposited by a SIDCO from the proprietary funds deposited by a SIDCO and the benefits of facilitating SIDCOs’ use of these accounts mitigate any costs that would flow from the loss of protection under Section 4d of the CEA.

As described above, the Commission has reinforced and enhanced the provisions of Section 4d of the CEA in order to further protect customer funds, and this proposal represents a limited exception to those provisions.

#### 2. Benefits

The proposed exemption would benefit market participants by permitting SIDCOs to deposit customer funds at the Federal Reserve Banks. Whereas commercial banks present credit and liquidity risks to a SIDCO, its FCM clearing members, and the FCMs’ customers, the Federal Reserve Banks are substantially insulated from such risks. As discussed in greater detail above, Title VIII of the Dodd-Frank Act was enacted to mitigate systemic risk in the financial system and to promote financial stability, in part, through an enhanced supervisory framework for SIDCOs. In addition to this framework, Title VIII, and more specifically, Section 806(a) of the Dodd-Frank Act, permits the Board to authorize a Federal Reserve Bank to establish and maintain an account for a SIDCO and provide to the SIDCO certain financial services. By enacting Title VIII in general, and Section 806(a) in particular, Congress recognized the importance of reducing systemic risk and providing SIDCOs with a potential safeguard during an extraordinary liquidity event. The proposed exemption would therefore help promote Congress’s goal of better preparing the U.S. financial system for potential future liquidity events. A SIDCO’s access to Federal Reserve Bank deposit accounts is also consistent with the international standards set forth in the Principles for Financial Market Infrastructures (“PFMIs”), which acknowledge the protections afforded by central banks from such credit and liquidity risks.<sup>58</sup>

<sup>53</sup> 5 U.S.C. 601 *et seq.*

<sup>54</sup> See 47 FR 18618, 18618–21 (Apr. 30, 1982).

<sup>55</sup> See New Regulatory Framework for Clearing Organizations, 66 FR 45604, 45609 (Aug. 29, 2001).

<sup>56</sup> 44 U.S.C. 3501 *et seq.*

<sup>57</sup> For a more detailed discussion of the standard of liability set forth in the Federal Reserve Bank Governing Documents, see discussion *supra* Part IV.

<sup>58</sup> See, e.g., CPSS–IOSCO, PFMIs, ¶ 3.9.3 (noting that “[c]entral banks have the lowest credit risk and

Moreover, the Federal Reserve Banks' standard of liability, as set forth in the Federal Reserve Bank Governing Documents, is better suited for the Federal Reserve Banks than Section 4d of the CEA, which was designed to govern customer funds deposited with a commercial bank, trust company, or DCO. Unlike commercial banks, Federal Reserve Banks do not operate for profit and serve only account holders authorized by statute, such as depository institutions and the U.S. government. Indeed, each year they return to the U.S. Department of Treasury all earnings in excess of Federal Reserve Bank operating and other expenses, such as litigation expenses. By exempting the Federal Reserve Banks from certain potential enforcement actions and private suits, the proposed exemption would reduce the Federal Reserve Banks' exposure to litigation. Because the Federal Reserve Banks return their earnings to the U.S. Department of Treasury's general fund, U.S. taxpayers may benefit from the proposed exemption. Therefore, the Commission believes that it is appropriate to apply the Federal Reserve Bank's standard of liability in order to facilitate the use of these accounts.

### 3. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA.<sup>59</sup> By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular

are the source of liquidity with regard to their currency of issue"); *see also* PFMI, Key Consideration 8 (specifying that a financial market infrastructure "with access to central bank accounts, payment services, or securities services should use these services, where practical, to enhance its management of liquidity risk").

<sup>59</sup> 7 U.S.C. 19(a).

order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

#### a. Protection of Market Participants and the Public

The proposed exemption would serve to facilitate SIDCOs' use of Federal Reserve Banks as depositories for customer funds. As the Federal Reserve System is the nation's central bank, such accounts would provide SIDCOs with the lowest possible credit risk in the event of a market disruption. Moreover, as Federal Reserve Banks are the source of liquidity with regard to U.S. dollar deposits, SIDCOs with access to a deposit account at a Federal Reserve Bank would also be better equipped to handle a liquidity event. As SIDCOs have been so designated because of their importance to the broader financial system, reducing these risks would protect market participants and the public.

#### b. Efficiency, Competitiveness, and Financial Integrity

A temporary or permanent disruption to the operations of a SIDCO could cause wide-spread and significant damage to the financial integrity of derivatives markets as a whole. Therefore, by facilitating a SIDCO's use of Federal Reserve Banks as depositories for customer funds, the proposed exemption would reduce liquidity and credit risk to the SIDCO, which would, in turn, promote the financial integrity of the derivatives markets.

The Commission does not anticipate the proposed exemption to have a significant impact on the efficiency and competitiveness of the derivatives markets.

#### c. Price Discovery

The Commission does not anticipate the proposed exemption to have an impact on the price discovery process.

#### d. Sound Risk Management Practices

The Commission believes that establishing SIDCO segregated customer accounts and enabling SIDCOs to access related services at a Federal Reserve Bank would improve a SIDCO's ability to manage liquidity risk and protect customer funds. Additionally, the Commission believes that the availability of a Federal Reserve Bank account could allow a SIDCO to reduce its concentration risk by adding an additional creditworthy depository in which to diversify funds. Accordingly, the proposed exemption promotes sound risk management practices.

The Commission further notes that, notwithstanding the proposed exemption from Section 4d of the CEA, the Federal Reserve Banks would still be required to segregate customer funds deposited by a SIDCO from the proprietary funds deposited by a SIDCO and adhere to the longstanding standards of liability that govern the Federal Reserve Banks.

#### e. Other Public Interest Considerations

The Commission believes that facilitating a SIDCO's access to Federal Reserve Bank accounts will promote the public interest by bolstering a SIDCO's ability to conduct settlements with a high degree of confidence under a wide range of stress scenarios, thereby increasing the likelihood of the SIDCO being able to provide its customers with access to their funds in times of market distress.

### VIII. Request for Comment

The Commission requests comment on all aspects of the proposed exemption, including, without limitation, the Commission's determination that the proposed exemption is consistent with the public interest, and the Commission's consideration of the costs and benefits of the proposed exemption.

The Commission requests comment regarding whether the proposed exemption should be expanded to include those customer accounts that are established pursuant to the CEA and that are held at Federal Reserve Banks by designated FMUs for which the Commission is not the Supervisory Agency.

### IX. Proposed Order of Exemption

After considering the above factors, the Commission proposes to issue the following:

#### Proposed Order

Pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), the Commodity Futures Trading Commission ("Commission") is the supervisory agency for certain derivatives clearing organizations ("DCOs") that have been designated by the Financial Stability Oversight Council as systemically important. Under Section 806(a) of the Dodd-Frank Act, the Board of Governors ("Board") of the Federal Reserve System is permitted to authorize a Federal Reserve Bank to establish and maintain a deposit account for a systemically important DCO ("SIDCO") and provide certain services to the SIDCO, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.

DCOs, including SIDCOs, are required to hold funds belonging to customers of their clearing members in accounts subject to

Section 4d of the Commodity Exchange Act (“CEA”). In addition, Section 22 of the CEA would typically provide for private rights of action for damages against persons who violate Section 4d, or persons who willfully aid, abet, counsel, induce, or procure the commission of a violation of Section 4d. However, the Commission understands that deposit accounts maintained by any Federal Reserve Bank would also be governed by applicable account agreements, operating circulars issued by Federal Reserve Banks for each service, the Federal Reserve Act, and Federal Reserve regulations and policies, and, with respect to book-entry securities services, the regulations of the domestic issuer of the securities or the issuer’s regulator (“Federal Reserve Bank Governing Documents”). The Federal Reserve Bank Governing Documents, as may be amended from time to time, include, but are not limited to, Federal Reserve Bank Operating Circular No. 6 (governing funds transfers through the Fedwire Funds Service); Federal Reserve Bank Operating Circular No. 7 (governing the maintenance of and transfer services for book-entry securities accounts); 12 CFR part 210, subpart B (governing funds transfers through the Fedwire Funds Service); and 31 CFR part 357, subpart B (setting forth the U.S. Department of the Treasury’s regulations governing book-entry treasury bonds, notes, and bills).

The Commission understands that under the Federal Reserve Bank Governing Documents, a Federal Reserve Bank has no requirement or obligation to inquire as to the legitimacy or accuracy of the instructions, or the transactions related to those instructions, or compliance by the SIDCO with its obligations under the CEA. To the extent that liability may accrue under the Federal Reserve Bank Governing Documents, the Commission understands that the Federal Reserve Bank may be held liable only for actual damages that are (i) incurred solely by the SIDCO account holder, and (ii) proximately caused by the Federal Reserve Bank’s failure to exercise ordinary care or act in good faith in accordance with the Federal Reserve Bank Governing Documents. The Commission proposes to exempt the Federal Reserve Banks in order to facilitate Federal Reserve Banks’ ability to accept SIDCO customer accounts.

Therefore, *it is ordered*, pursuant to Section 4(c) of the CEA, 7 U.S.C. 6(c), that the Federal Reserve Banks are granted an exemption from Sections 4d and 22 of the CEA, subject to the terms and conditions specified herein:

1. *Segregation.* Money, securities, and property deposited into a customer account established pursuant to the CEA by a SIDCO with a Federal Reserve Bank shall be separately accounted for and segregated from the money, securities, and property deposited into a proprietary account of the SIDCO depositing such funds and from the money, securities, and property deposited into the account of any person other than the customers for whom the money, securities, or property is held.

2. *Information Requests.* Federal Reserve Banks must reply promptly and directly to any request for confirmation of account

balances or provision of any other information regarding or related to the SIDCO customer account(s) that are established pursuant to the CEA from the director of the Division of Clearing and Risk of the Commission, or any successor division, or such director’s designees.

3. *Applicability to Federal Reserve Banks.* Subject to the conditions contained herein, the order applies to all Federal Reserve Banks that provide customer accounts and other services to SIDCOs. In addition, pursuant to the Federal Reserve’s Key Policies for the Provision of Financial Services: Standards Related to Priced-Service Activities of the Federal Reserve Banks, information obtained by the Board of Governors of the Federal Reserve System or its designees during the course of supervising SIDCOs, pursuant to Title VIII of the Dodd-Frank Act, or any counterparty to a SIDCO under any authority, shall not be attributed by the Commission to any Federal Reserve Bank providing accounts and financial services to SIDCO account holders.

4. *Reservation of Rights.* This order is based upon the analysis set forth above. Any material change in law or circumstances pursuant to which this order is granted might require the Commission to reconsider its finding that the exemption contained herein is appropriate and/or consistent with the public interest and purposes of the CEA. Further, the Commission reserves the right, in its discretion, to revisit any of the terms and conditions of the relief provided herein, including but not limited to, making a determination that certain entities described herein should be subject to the Commission’s full jurisdiction, and to condition, suspend, terminate, or otherwise modify or restrict the exemption granted in this order, as appropriate, upon its own motion.

Issued in Washington, DC, on May 27, 2016, by the Commission.

**Christopher J. Kirkpatrick,**  
*Secretary of the Commission.*

**Appendix to Notice of Proposed Order and Request for Comment on a Proposal To Exempt, Pursuant to the Authority in Section 4(c) of the Commodity Exchange Act, the Federal Reserve Banks From Sections 4d and 22 of the Commodity Exchange Act—Commission Voting Summary**

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2016–13055 Filed 6–1–16; 8:45 am]

**BILLING CODE 6351–01–P**

**CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

**Information Collection; Submission for OMB Review, Comment Request**

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled National Service Trust Voucher and Payment Request Form/National Service Trust Manual Payment Request Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nahid Jarrett, at 202–606–6753 or email to [njarrett@cns.gov](mailto:njarrett@cns.gov). Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

**DATES:** Comments may be submitted, identified by the title of the information collection activity, within July 5, 2016.

**ADDRESSES:** Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

- (1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or
- (2) By email to: [smar@omb.eop.gov](mailto:smar@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** The OMB is particularly interested in comments which:

- 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to 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.

**Comments**

A 60-day Notice requesting public comment was published in the **Federal Register** on February 12, 2016, at 81 FR

7512. This comment period ended April 12, 2016. No public comments were received from this Notice.

*Description:* CNCS seeks to renew the current information collection request.

After an AmeriCorps member completes a period of national service, the individual receives an education award that can be used to pay against qualified student loans or pay for current post-secondary educational expenses. The *National Service Trust Voucher and Payment Request Form/National Service Trust Manual Payment Request Form* is the document that a member uses to access his or her account in the National Service Trust.

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.

*Type of Review:* Renewal.

*Agency:* Corporation for National and Community Service.

*Title:* National Service Trust Voucher & Payment Request Form/National Service Trust Manual Payment Request Form.

*OMB Number:* 3045-0014.

*Agency Number:* None.

*Affected Public:* Individuals using a Segal AmeriCorps Education Award, authorized school officials and qualified student loan holders.

*Total Respondents:* 162,000.

*Frequency:* One or more per education award.

*Average Time per Response:* Averages 5 minutes.

*Estimated Total Burden Hours:* 13,500.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Dated: May 25, 2016.

**Maggie Taylor-Coates,**  
Chief of Trust Operations.

[FR Doc. 2016-13047 Filed 6-1-16; 8:45 am]

**BILLING CODE 6050-28-P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Information Collection; Submission for OMB Review, Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled CNCS Forbearance Request for National

Service Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nahid Jarrett, at 202-606-6753 or email to [njarrett@cns.gov](mailto:njarrett@cns.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.

**DATES:** Comments may be submitted, identified by the title of the information collection activity, within July 5, 2016.

**ADDRESSES:** Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

- (1) By fax to: 202-395-6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or
- (2) By email to: [smar@omb.eop.gov](mailto:smar@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** The OMB is particularly interested in comments which:

- 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to 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.

### Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on March 10, 2016, at 81 FR 12719. This comment period ended May 9, 2016. No public comments were received from this Notice.

*Description:* CNCS seeks to renew the current information collection request *CNCS Forbearance Request for National*

*Service Form*, which certifies that AmeriCorps members are eligible for forbearance based on their enrollment in a national service position. AmeriCorps members use the form to request forbearance from their loan servicer. CNCS also seeks to continue using the current application until the revised application is approved by OMB.

*Type of Review:* Renewal.

*Agency:* Corporation for National and Community Service.

*Title:* CNCS Forbearance Request for National Service Form.

*OMB Number:* 3045-0030.

*Agency Number:* None.

*Affected Public:* AmeriCorps members and alumni that wish to request forbearance on qualified student loans and qualified loan servicers.

*Total Respondents:* 69,300.

*Frequency:* One or more per education award.

*Average Time per Response:* Averages 5 minutes.

*Estimated Total Burden Hours:* 5,775.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Dated: May 25, 2016.

**Maggie Taylor-Coates,**  
Chief of Trust Operations.

[FR Doc. 2016-13046 Filed 6-1-16; 8:45 am]

**BILLING CODE 6050-28-P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Information Collection; Submission for OMB Review, Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled AmeriCorps Interest Payment Form/AmeriCorps—Manual Interest Payment Request Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nahid Jarrett, at 202-606-6753 or email to [njarrett@cns.gov](mailto:njarrett@cns.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.

**DATES:** Comments may be submitted, identified by the title of the information collection activity, within July 5, 2016.

**ADDRESSES:** Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202-395-6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: [smar@omb.eop.gov](mailto:smar@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** The OMB is particularly interested in comments which:

- 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to 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.

#### Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on March 10, 2016, at 81 FR 12719. This comment period ended May 9, 2016. No public comments were received from this Notice.

*Description:* CNCS seeks to renew the current information collection request. After an AmeriCorps member completes a period of national and community service, the individual receives an education award that can be used to pay against qualified student loans or pay for current post-secondary educational expenses. AmeriCorps members use the *AmeriCorps Interest Payment Form/AmeriCorps—Manual Interest Payment Request Form* to request a payment of accrued interest on qualified student loans and to authorize the release of loan information to the National Service Trust; schools and lenders verify eligibility for the payments; and both parties verify certain legal requirements.

*Type of Review:* Renewal.  
*Agency:* Corporation for National and Community Service.

*Title:* AmeriCorps Interest Payment Form/AmeriCorps—Manual Interest Payment Request Form.

*OMB Number:* 3045-0053.

*Agency Number:* None.

*Affected Public:* AmeriCorps Members/Alum that have completed a term of national service who seek to have the interest that has accrued on their qualified student loans during their service term repaid and qualified loan servicers.

*Total Respondents:* 13,200.

*Frequency:* One or more per education award.

*Average Time per Response:* Averages 5 minutes.

*Estimated Total Burden Hours:* 1,100.

*Total Burden Cost (capital/startup):*

None.

*Total Burden Cost (operating/maintenance):* None.

Dated: May 25, 2016.

**Maggie Taylor-Coates,**

*Chief of Trust Operations.*

[FR Doc. 2016-13048 Filed 6-1-16; 8:45 am]

**BILLING CODE 6050-28-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Requests To Exhume and Repatriate Native American Burials From Carlisle Indian Industrial School Cemetery; Public Listening Sessions

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of public listening sessions.

**SUMMARY:** The Army National Military Cemeteries (ANMC) announces that it will hold two public listening sessions to solicit information on tribal requests for exhumation of Native American human remains from the former Carlisle Indian Industrial School Cemetery located on Carlisle Barracks, PA. ANMC has received requests from two tribes to disinter and repatriate the remains of tribal children buried at this cemetery. The listening sessions will be held in conjunction with the National Council of the American Indian mid-year conference in Spokane, WA and the United South and Eastern Tribes annual meeting in Cherokee, NC. The listening sessions are intended to provide any tribe that may have tribal members buried in this cemetery with an opportunity to share their views on this topic with Agency representatives, along with any data or analysis they may have. All comments will be

transcribed and available upon request from Mr. Art Smith, whose contact information is listed below in this notice. We encourage tribes to participate in these listening sessions.

**DATES:** The listening sessions will be held on Monday, June 27, 2016, from 9:00 a.m. to 5 p.m., Local Time, and on Wednesday, October 26, 2016, from 1:30 p.m. to 5:00 p.m., Local Time. If all interested parties have had the opportunity to comment, the sessions may conclude early.

**ADDRESSES:** The June 27th listening session will be held at the Spokane Convention Center, Room 301, 334 West Spokane Falls Blvd., Spokane, WA 99201. The October 26th session will be held at the Harrah's Cherokee Hotel and Casino, 777 Casino Dr., Cherokee, NC 28719. In addition to attending the session in person, the Agency offers several ways to provide comments, as enumerated below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Smith, Army National Military Cemeteries at: [usarmy.pentagon.hqda-anmc.mbx.accountability-coe@mail.mil](mailto:usarmy.pentagon.hqda-anmc.mbx.accountability-coe@mail.mil).

#### SUPPLEMENTARY INFORMATION:

*Submitting Comments:* ANMC is accepting public comments through October 30, 2016. You may submit your comments and material by mail, or email, but please use only one of these means. ANMC recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that ANMC can contact you if there are questions regarding your submission.

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. Choose whether you are submitting your comment as a representative of a known individual buried at Carlisle cemetery or as a representative of a tribal government and then submit.

We will consider all comments and material received during the comment period, October 30, 2016.

*You may submit comments identified by:*

*Mail:* Army National Military Cemeteries, 1 Memorial Drive, Arlington, VA 22211.

*Email:* [usarmy.pentagon.hqda-anmc.mbx.accountability-coe@mail.mil](mailto:usarmy.pentagon.hqda-anmc.mbx.accountability-coe@mail.mil).

*Background:* In January 2016, Army received requests from two tribes to exhume the remains of tribal

individuals buried in the Carlisle Indian Industrial School cemetery and repatriate those remains to the tribe. Historic records indicate that the School and cemetery were operated from 1879 until 1918, under the direction of the Indian Bureau. In 1918, the Army regained control of the property and established a hospital to care for the large number of wounded returning from the European battlefield. The exact number of Native Americans interred in the cemetery is uncertain as the cemetery includes a number of non-Natives and unknown burials. Army is working with the Bureau of Indian Affairs to obtain school records which may provide additional details on those buried in this cemetery.

Army Regulation 210-190 requires specific documentation to establish the identity of the living relatives with closest familial ties and the legal authority to represent the family. The Army recognizes that since the deceased were children and it is unlikely that there are direct descendants, tracing other relatives may be a more involved process.

*Meeting Participation and Information ANMC seeks from the public:* ANMC would like to know the views of the affected tribes and families on the issue of disinterment from the Carlisle cemetery. The listening session is open to the public. Speakers should try to limit their remarks to 3-5 minutes. No preregistration is required. Attendees may submit material to the ANMC staff at the session or through other means provided above.

**Patrick K. Hallinan,**

*Executive Director, Army National Military Cemeteries.*

[FR Doc. 2016-12910 Filed 6-1-16; 8:45 am]

**BILLING CODE 5001-03-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Intelligence Agency National Intelligence University Board of Visitors; Notice of Federal Advisory Committee Meeting

**AGENCY:** National Intelligence University, Defense Intelligence Agency, Department of Defense.

**ACTION:** Notice of closed meeting.

**SUMMARY:** The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the National Intelligence University Board of Visitors has been scheduled. The meeting is closed to the public.

**DATES:** Tuesday, June 14, 2016 (7:30 a.m. to 5:15 p.m.) and Wednesday, June 15, 2016 (7:30 a.m. to 2:00 p.m.).

**ADDRESSES:** Defense Intelligence Agency, 7400 Pentagon, ATTN: NIU, Washington, DC 20301-7400.

**FOR FURTHER INFORMATION CONTACT:** Dr. David R. Ellison, President, DIA National Intelligence University, Washington, DC 20340-5100, Phone: (202) 231-3344.

**SUPPLEMENTARY INFORMATION:** Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the National Intelligence University Board of Visitors is unable to provide public notification, as required by 41 CFR 102-3.150(a), for its meeting scheduled for June 14 through June 15, 2016. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement.

*Purpose:* The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the National Intelligence University.

*Agenda:* The following topics are listed on the National Intelligence University Board of Visitors meeting agenda: Welcome/Plan of Action; Faculty Conversation; Bethesda Campus Update; Strategic Implementation Plan Update; BOV Succession Planning Update; Academic Program Review; Faculty Workload; Accreditation Update; Program/Budget Rationalization; Executive Session; Alumni .edu address; Analytic Methodologies and Tools; Faculty Senate; Research Update/Presentations; Working Lunch with IC Senior Leaders; and Executive Session. The entire meeting is devoted to the discussion of classified information as defined in 5 U.S.C. 552b(c)(1) and therefore will be closed. Pursuant to 41 CFR 102-3.105(j) and 102-3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the National Intelligence University Board of Visitors about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the National Intelligence University Board of Visitors. All written statements shall be submitted to the Designated Federal Officer for the National Intelligence University Board of Visitors, and this individual will ensure that the written statements are provided to the

membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—<http://www.facadatabase.gov/>.

Dated: May 27, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2016-12957 Filed 6-1-16; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2016-ICCD-0028]

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Annual and Final Performance Report Data Collection for Arts in Education Grantees

**AGENCY:** Office of Innovation and Improvement (OII), 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 July 5, 2016.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2016-ICCD-0028. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 2E-115, Washington, DC 20202-4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Doug Herbert, 202-401-3813.

**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:* Annual and Final Performance Report Data Collection for Arts in Education Grantees.

*OMB Control Number:* 1855-NEW.

*Type of Review:* A new information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments; Private Sector.

*Total Estimated Number of Annual Responses:* 98.

*Total Estimated Number of Annual Burden Hours:* 3,920.

*Abstract:* The Government Performance and Results Act (GPRA) requires all federally funded agencies to develop and implement an accountability system based on performance measurement. This regulation applies to grantees receiving funds from the Dept. of ED's Office of Innovation and Improvement Arts in Education—Model Development and Dissemination (AEMDD), Professional Development for Arts Educators (PDAE), and Arts in Education National Program (AENP) programs. Each grantee is required to report on performance and progress towards GPRA measures as a condition of the grant. Data for GPRA performance measures are collected through the Annual Performance Report (APR) completed by grantees. The APR also collects budget information and data on project-specific performance measures. The forms being submitted for OMB review are APR templates that

expand on the ED 524-B form to gather additional data on performance from Arts in Education grantees in a streamlined manner. Performance data are used to help make decisions about continued funding for grantees and to show overall program progress by aggregating GPRA data across grantees. GPRA data may be also be used by Congress to determine future program funding.

Dated: May 27, 2016.

**Tomakie Washington,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2016-13045 Filed 6-1-16; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

#### Filings Instituting Proceedings

*Docket Number:* PR11-108-000.

*Applicants:* Atlanta Gas Light Company.

*Description:* Tariff filing per 284.123(b)(1) + (g): Five-Year Rate Review Certification to be effective N/A.

*Filed Date:* 5/17/16.

*Accession Number:* 201605175129.

*Comments Due:* 5 p.m. ET 6/7/16.

*284.123(g) Protests Due:* 5 p.m. ET 7/18/16.

*Docket Number:* PR16-54-000.

*Applicants:* Public Service Company of Colorado.

*Description:* Tariff filing per 284.123/.224: 20160523 Compliance in PR16-36-000 March 1, 2016 Eff. Date to be effective 4/16/2016.

*Filed Date:* 5/23/16.

*Accession Number:* 201605235159.

*Comments/Protests Due:* 5 p.m. ET 6/13/16.

*Docket Number:* PR16-55-000.

*Applicants:* Service Company of Colorado.

*Description:* Tariff filing per 284.123(b)(1) + (g): 20160524\_SOR GRSA Refund Eff 5-1-2016 to be effective 5/1/2016.

*Filed Date:* 5/24/16.

*Accession Number:* 201605245141.

*Comments Due:* 5 p.m. ET 6/14/16.

*284.123(g) Protests Due:* 5 p.m. ET 7/25/16.

*Docket Numbers:* RP16-967-000.

*Applicants:* Dominion Transmission, Inc.

*Description:* Section 4(d) rate filing per 154.204: DTI—May 25, 2016 Nonconforming Service Agreement to be effective 6/1/2016.

*Filed Date:* 5/25/16.

*Accession Number:* 20160525-5059.

*Comments Due:* 5 p.m. ET 6/6/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: May 25, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016-12992 Filed 6-1-16; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

#### Filings Instituting Proceedings

*Docket Numbers:* RP12-609-000.

*Applicants:* Texas Gas Transmission, LLC.

*Description:* Report Filing: 2015 Operational Purchases and Sales Report to be effective N/A.

*Filed Date:* 4/29/16.

*Accession Number:* 20160429-5073.

*Comments Due:* 5 p.m. ET 6/3/16.

*Docket Numbers:* RP13-212-000.

*Applicants:* Boardwalk Storage Company, LLC.

*Description:* Report Filing: 2015 Operational Purchases and Sales Report to be effective N/A.

*Filed Date:* 4/29/16.

*Accession Number:* 20160429-5077.

*Comments Due:* 5 p.m. ET 6/3/16.

*Docket Numbers:* RP16-968-000.

*Applicants:* Texas Eastern Transmission, LP.



*Description:* Section 4(d) rate filing per 154.204: Negotiated Rates—June 2016 Chevron TEAM 2014 Releases to be effective 6/1/2016.

*Filed Date:* 5/26/16.

*Accession Number:* 20160526–5047.

*Comments Due:* 5 p.m. ET 6/7/16.

*Docket Numbers:* RP16–969–000.

*Applicants:* Equitrans, L.P.

*Description:* Section 4(d) rate filing per 154.204: FTSS and GSS Rate Schedule Clarifications to be effective 6/26/2016.

*Filed Date:* 5/26/16.

*Accession Number:* 20160526–5071.

*Comments Due:* 5 p.m. ET 6/7/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 26, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–12993 Filed 6–1–16; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–9947–21–Region 3]

### Clean Water Act: Availability of List Decisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice and initial request for public input.

**SUMMARY:** The Clean Water Act (CWA) requires that states periodically submit, and EPA approve or disapprove, lists of waters (called “Section 303(d) lists”) for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards and for which total maximum daily loads (TMDLs) must be prepared. Waters identified on Section

303(d) lists are called “water quality-limited segments.” This notice announces EPA’s proposal to include in West Virginia’s 2014 Section 303(d) list certain water quality-limited segments and requests public comment.

On May 11, 2016, EPA partially approved West Virginia’s 2014 Section 303(d) list of water quality-limited segments and associated pollutants and partially disapproved West Virginia’s submission to the extent that West Virginia did not evaluate certain water quality information and therefore did not identify certain water quality-limited segments. EPA has evaluated the information and proposes to identify these additional water quality-limited segments for inclusion on the State’s 2014 Section 303(d) list. The proposed water quality-limited segments are identified in Enclosure 3 of the decision document available at the Web site link provided below.

EPA is providing the public the opportunity to review its decision to add these water quality-limited segments to West Virginia’s 2014 Section 303(d) list. EPA will consider public comments before transmitting its final listing decision to the State.

**DATES:** Comments must be submitted in writing to EPA on or before July 5, 2016.

**ADDRESSES:** Comments on the proposed decision should be sent to Bill Richardson, Water Protection Division (3WP30), U.S. Environmental Protection Agency Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, or emailed to [Richardson.william@epa.gov](mailto:Richardson.william@epa.gov). Oral comments will not be considered. Copies of EPA’s letter concerning West Virginia’s 2014 Section 303(d) list that explains the rationale for EPA’s decision and EPA’s proposed list of waters to be added to West Virginia’s 2014 Section 303(d) list can be obtained at EPA Region 3’s Web site at <https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-3> or by writing Mr. Richardson at the above address. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Mr. Richardson to schedule an inspection.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Bill Richardson at (215) 814–5675.

**SUPPLEMENTARY INFORMATION:** Section 303(d) of the Clean Water Act requires that each State identify those waters (called “water quality-limited segments”) for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards

and for which total maximum daily loads (TMDLs) must be prepared. For those waters, States are required to establish TMDLs according to a priority ranking.

EPA’s Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require States to assemble and evaluate existing and readily-available water quality data and to identify water quality-limited segments still requiring TMDLs every two years. The list of waters still needing TMDL development must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA’s regulations, EPA received West Virginia’s submittal of its listing decisions under Section 303(d)(2) on April 13, 2015. On May 11, 2016, EPA partially approved West Virginia’s 2014 list of water quality-limited segments and associated priority ranking and partially disapproved West Virginia’s submission to the extent that West Virginia did not list sixty-one (61) water quality-limited segments based upon existing data and public input. EPA solicits public comment on the addition of these waters to the State’s list, as required by 40 CFR 130.7(d)(2).

Dated: May 24, 2016.

**Jon M. Capacasa,**

*Director, Water Protection Division, U.S. Environmental Protection Agency, Region III.*

[FR Doc. 2016–13030 Filed 6–1–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0022; FRL–9946–41]

### Pesticide Product Registration; Receipt of Applications for New Uses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

**DATES:** Comments must be received on or before July 5, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number and the File Symbol or EPA

Registration Number of interest as shown in the body of this document, by one of the following methods:

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

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

**FOR FURTHER INFORMATION CONTACT:**

Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (703) 305-7090; email address: [BPPDFRNotices@epa.gov](mailto:BPPDFRNotices@epa.gov), Susan Lewis, Registration Division (RD) (7505P), main telephone number: (703) 305-7090; email address: [RDFRNotices@epa.gov](mailto:RDFRNotices@epa.gov). The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

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

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

*B. What should I consider as I prepare my comments for EPA?*

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

2. **Tips for preparing your comments.** When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

**II. Registration Applications**

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. **EPA Registration Numbers:** 100-739, 100-1262, 100-1312, 100-1313, 100-1476, and 100-1554. **Docket ID number:** EPA-HQ-OPP-2016-0254. **Applicant:** Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. **Active ingredient:** Difenoconazole. **Product type:** Fungicide. **Proposed uses:** Rice; wild rice; and cotton (crop subgroup 20C). **Contact:** RD.

2. **EPA Registration Number:** 2724-804. **Docket ID number:** EPA-HQ-OPP-2016-0128. **Applicant:** Wellmark International, 1501 E. Woodfield Road, Suite 200 West, Schaumburg, IL 60173. **Active ingredient:** Etofenprox. **Product type:** Insecticide. **Proposed use:** Fungi, edible, group 21. **Contact:** RD.

3. **EPA Registration Number:** 67702-49. **Docket ID number:** EPA-HQ-OPP-2016-0256. **Applicant:** W. Neudorff GmbH KG, An der Mühle 3, 31860 Emmerthal, Germany (c/o Walter G. Talarek, PC, 1008 Riva Ridge Dr., Great Falls, VA 22066-1620). **Active ingredient:** Iron phosphate. **Product type:** Biochemical molluscicide.

**Proposed use:** Broadcast application to crops under flooded conditions to control golden apple snails. **Contact:** BPPD.

4. **EPA Registration Numbers:** 71512-21, 71512-22, and 71512-23. **Docket ID number:** EPA-HQ-OPP-2016-0263. **Applicant:** ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. **Active ingredient:** Isofetamid. **Product type:** Fungicide. **Proposed uses:** Bushberries (subgroup 13-07B); caneberries (subgroup 13-07A); pome fruit (group 11-10); small vine climbing fruit (subgroup 13-07E); stone fruit (subgroups 12-12A, 12-12B, 12-12C); legume vegetable pea and bean, succulent and dried, except soybeans (subgroups 6A, 6B, 6C); ornamental plants. **Contact:** RD.

5. **EPA Registration Number:** 86203-4. **Docket ID number:** EPA-HQ-OPP-2016-0128. **Applicant:** Mitsui Chemicals Agro, Inc. (c/o Landis International, Inc., P.O. Box 5126; Valdosta, GA 31603). **Active ingredient:** Etofenprox. **Product type:** Insecticide. **Proposed use:** Fungi, edible, group 21. **Contact:** RD.

6. **File Symbol:** 89186-R. **Docket ID number:** EPA-HQ-OPP-2016-0258. **Applicant:** ConidioTec, 2610 Sleepy Hollow Drive, State College, PA 16803. **Active ingredient:** *Beauveria bassiana* Strain GHA. **Product type:** Insecticide. **Proposed use:** Indoor use in buildings and structures to control and prevent bedbug infestations. **Contact:** BPPD.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: May 19, 2016.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2016-13029 Filed 6-1-16; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OPPT-2016-0023; FRL-9946-86]**

**Certain New Chemicals; Receipt and Status Information for April 2016**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is required under the Toxic Substances Control Act (TSCA) to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN); an application for a test marketing exemption (TME), both pending and/or expired; and a periodic status report on any new chemicals under EPA review and the receipt of notices of commencement (NOC) to

manufacture those chemicals. This document covers the period from April 1, 2016 to April 29, 2016.

**DATES:** Comments identified by the specific case number provided in this document, must be received on or before July 5, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2016-0023, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

**FOR FURTHER INFORMATION CONTACT:** For technical information contact: Jim Rahai, Information Management Division, 7407M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (202) 564-8593; email address: [rahai.jim@epa.gov](mailto:rahai.jim@epa.gov).

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the actions addressed in this document.

*B. What should I consider as I prepare my comments for EPA?*

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

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

**II. What action is the Agency taking?**

This document provides receipt and status reports, which cover the period from April 1, 2016 to April 29, 2016, and consists of the PMNs and TMEs both pending and/or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**III. What is the Agency's authority for taking this action?**

Under TSCA, 15 U.S.C. 2601 *et seq.*, EPA classifies a chemical substance as either an "existing" chemical or a "new" chemical. Any chemical substance that is not on EPA's TSCA

Inventory is classified as a "new" chemical, while those that are on the TSCA Inventory are classified as an "existing" chemical. For more information about the TSCA Inventory go to: <http://www.epa.gov/opptintr/newchems/pubs/inventory.htm>.

Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for "test marketing" purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: <http://www.epa.gov/oppt/newchems>.

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic reports on the status of new chemicals under review and the receipt of NOCs to manufacture those chemicals.

**IV. Receipt and Status Reports**

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that the information in the table is generic information because the specific information provided by the submitter was claimed as CBI.

For the 58 PMNs received by EPA during this period, Table 1 provides the following information (to the extent that such information is not claimed as CBI): The EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer/importer; the potential uses identified by the manufacturer/importer in the PMN; and the chemical identity.

TABLE 1—PMNS RECEIVED FROM APRIL 1, 2016 TO APRIL 29, 2016

Case No.	Date received	Projected end date for EPA review	Manufacturer/Importer	Use(s)	Chemical identity
P-16-0095 .....	4/11/2016	7/10/2016	CBI .....	(G) Flame retardant additive .....	(G) Phenol-formaldehyde resin.
P-16-0119 .....	4/20/2016	7/19/2016	CBI .....	(G) Intermediate .....	(G) Chlorofluorocarbon.
P-16-0150 .....	4/26/2016	7/25/2016	CBI .....	(G) Intermediate .....	(G) Chlorofluorocarbon.

TABLE 1—PMNS RECEIVED FROM APRIL 1, 2016 TO APRIL 29, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer/Importer	Use(s)	Chemical identity
P-16-0267 .....	4/20/2016	7/19/2016	Allnex USA, Inc	(S) Electro-deposition primer .....	(G) Fatty acids, reaction products with alkylamine, polymers with substituted carbomonocycle, substituted alkylamines, heteromonocycle and substituted alkanooate, lactates (salts).
P-16-0277 .....	4/1/2016	6/30/2016	Organic Dyestuffs Corporation.	(S) Metalized dye for dyeing wool with good fastness properties.	(S) Chromate(1-), hydroxy[2-(hydroxy-ko)-3-[2-[2-(hydroxy-ko)-1-naphthalenyl]diazanyl-kn1]-5-nitrobenzenesulfonato(3-)]-, sodium (1:1).
P-16-0279 .....	4/4/2016	7/3/2016	Akzo Nobel Surface Chemistry, LLC.	(G) Component in paints .....	(S) Hexanamide, n,-[3-(dimethylamino)propyl]-, compd, with 2-methyloxirane polymer with oxirane mono (2-ethylhexyl) ether phosphate.
P-16-0281 .....	4/11/2016	7/10/2016	CBI .....	(G) Reactive polyol .....	(G) Fatty alcohols—dimers, trimers, polymers.
P-16-0287 .....	4/1/2016	6/30/2016	CBI .....	(G) Hardener for epoxy coating ...	(G) Alkanoic acid, 2-substituted-methyl ester, reaction products with aromatic diamine-[alkanedylbi-s(oxymethylene)]bis[oxirane] polymer.
P-16-0289 .....	4/1/2016	6/30/2016	CBI .....	(G) Extrusion compounding resin molding resin.	(G) Semi-aromatic polyamide.
P-16-0290 .....	4/1/2016	6/30/2016	CBI .....	(G) Fuel additive .....	(G) Copolymer of maleic acid and olefin.
P-16-0291 .....	4/3/2016	7/2/2016	CBI .....	(G) Curing agent .....	(G) 1,3-cyclohexanedimethanamine adduct.
P-16-0292 .....	4/5/2016	7/4/2016	CBI .....	(S) Intermediate for use in the manufacture of polymers.	(G) Depolymerized waste plastics.
P-16-0293 .....	4/13/2016	7/12/2016	Charkit Chemical Corporation.	(S) Compounding of fragrance for industrial cleaners/janitorial compounds, detergents, etc.	(S) Octanoic acid, phenylmethyl ester.
P-16-0299 .....	4/20/2016	7/19/2016	CBI .....	(S) Reactive (meth)acrylate oligomer for ultra violet cured 3d printed parts.	(G) Polyurethane, methacrylate-blocked.
P-16-0300 .....	4/6/2016	7/5/2016	H.B. Fuller Company.	(G) Industrial adhesive .....	(G) Oxirane, 2-methyl-, polymer with 1,3-xylylene diisocyanate and oxirane, 3-(trimethoxysilyl)propyl isocyanate.
P-16-0301 .....	4/6/2016	7/5/2016	CBI .....	(G) Intermediate .....	(G) Propyl silsesquioxanes, hydrogen-terminated.
P-16-0302 .....	4/6/2016	7/5/2016	CBI .....	(G) Plastic additive .....	(G) Organic modified propyl silsesquioxane.
P-16-0303 .....	4/7/2016	7/6/2016	CBI .....	(G) Use for the production of acrylic resin for waterborne exterior coatings composition.	(G) Alkyl methacrylate polymer with styrene, amino acrylate and acrylic acid, ammonium salt.
P-16-0304 .....	4/7/2016	7/6/2016	CBI .....	(G) Industrial adhesive .....	(G) Polyurea grease.
P-16-0305 .....	4/7/2016	7/6/2016	CBI .....	(G) Industrial Adhesive .....	(G) Polyurea grease.
P-16-0307 .....	4/8/2016	7/7/2016	CBI .....	(G) Open non dispersive use .....	(G) Heteropolycycliccarboxylic acid, 1,3-dihydro-disubstituted-, polymer with 1,1'-methylenebis[4-isocyanatobenzene], reaction products with silica.
P-16-0308 .....	4/8/2016	7/7/2016	Itaconix Corporation.	(G) Reactive Monomer .....	(S) Butanedioic acid, 2-methylene-, 1,4-bis (2-methylpropyl) ester.

TABLE 1—PMNS RECEIVED FROM APRIL 1, 2016 TO APRIL 29, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer/Importer	Use(s)	Chemical identity
P-16-0309 .....	4/8/2016	7/7/2016	CBI .....	(G) PMN substances are intended for use as rheological or thixotropic agents used in the production of solvent based industrial coatings, high solid aromatic paints, adhesives, sealants, and other types of paints and topcoats.	(G) Bisamide mixture.
P-16-0310 .....	4/8/2016	7/7/2016	CBI .....	(G) PMN substances are intended for use as rheological or thixotropic agents used in the production of solvent based industrial coatings, high solid aromatic paints, adhesives, sealants, and other types of paints and topcoats.	(G) Bisamide mixture.
P-16-0311 .....	4/8/2016	7/7/2016	CBI .....	(S) Coatings for wood metal and plastic.	(G) Aromatic dicarboxylic acid, polymer with alkyl dicarboxylic acid, alkyl diol, hydroxy(hydroxyalkyl)alkylcarboxylic acid, methylenebis(isocyanato cycloalkane) and alkyl ethylidene bis(phenyleneoxy) bis[alkyl alcohol].
P-16-0312 .....	4/8/2016	7/7/2016	CBI .....	(S) Coatings for wood metal and plastic.	(G) Aromatic dicarboxylic acid, polymer with cycloalkanemethanol, alkanediamine, alkanedioic acid, hydroxy-2-(hydroxyalkyl)-2-alkylcarboxylic acid, methyl enebis[isocyanatocycloalkane] and [(methylene)ethylidene]bis(phenyleneoxy)]bis[alkanol].
P-16-0313 .....	4/11/2016	7/10/2016	Honeyol, Inc .....	(S) Use in production of resins (raw material used in the production of resins).	(S) Tar acids (shale oil), c6-9-fraction, alkylphenols, low-boiling.
P-16-0314 .....	4/11/2016	7/10/2016	Firmenich, Inc .....	(G) As part of a fragrance formula	(S) Ethanone, 1-(5-propyl-1,3-benzodioxol-2-yl)-
P-16-0315 .....	4/11/2016	7/10/2016	CBI .....	(S) Industrial rubber formulation ..	(G) Alkyldiene, polymer, terminated alkoxyalkylcarbamate.
P-16-0316 .....	4/11/2016	7/10/2016	CBI .....	(G) Drilling chemical .....	(G) Aliphatic polyester.
P-16-0317 .....	4/11/2016	7/10/2016	CBI .....	(G) Drilling chemical .....	(G) Aliphatic polyester.
P-16-0322 .....	4/22/2016	7/21/2016	CBI .....	(G) Pulp bleaching catalyst .....	(G) Manganese cyclic (tri)amine chloride complex.
P-16-0322 .....	4/22/2016	7/21/2016	CBI .....	(G) Textile bleaching catalyst .....	(G) Manganese cyclic (tri)amine chloride complex.
P-16-0323 .....	4/13/2016	7/12/2016	Allnex USA, Inc .....	(G) Coating resin .....	(G) Alkylaldehyde, reaction products with substituted carbomonocycle-substituted heteromonocycle-alkylene glycol bis [[[substituted (oxoneoalky)oxy]alkyl]amino]alkyl ether polymer and alkyl substituted alkanediamine, acetate salts.
P-16-0324 .....	4/13/2016	7/12/2016	CBI .....	(G) Adhesive for open non-descriptive use.	(G) Ultra violet-curable urethane acrylate.
P-16-0325 .....	4/13/2016	7/12/2016	CBI .....	(G) Oil & Gas extraction .....	(G) Polymer of substituted acrylic acid and bromohexane.
P-16-0326 .....	4/27/2016	7/26/2016	Firmenich, Inc .....	(G) As part of a fragrance formula	(S) Propanoic acid, 2,2-dimethyl-1-methyl-2-(1-methylethoxy)-2-oxoethyl ester.
P-16-0327 .....	4/14/2016	7/13/2016	CBI .....	(G) Additive in rubber tires .....	(G) Alkenoic acid, polymer with alkylalkenoate, sodium salt.

TABLE 1—PMNS RECEIVED FROM APRIL 1, 2016 TO APRIL 29, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer/Importer	Use(s)	Chemical identity
P-16-0328 .....	4/19/2016	7/18/2016	CBI .....	(G) Intermediate .....	(G) Terephthalic acid, polymer with alkanepolycarboxylic acids, alkanepolyols, isophthalic acid, polyetherpolyol, 1,1-methylenebis [isocyanatobenzene], phthalic anhydride and a substituted alkanepolyol.
P-16-0329 .....	4/19/2016	7/18/2016	CBI .....	(G) Adhesive component .....	(G) Polymer of alkanepolycarboxylic acids, alkanepolyols, isophthalic acid, polyetherpolyols, 1,1-methylenebis[isocyanatobenzene], terephthalic acid, phthalic anhydride and a substituted alkanepolyol.
P-16-0330 .....	4/19/2016	7/18/2016	H.B. Fuller Company.	(G) Industrial adhesive .....	(G) Hydroxy functional triglyceride polymer with glycerol mono-ester and 1,1'-methylenebis[4-isocyanatobenzene].
P-16-0331 .....	4/19/2016	7/18/2016	H.B. Fuller Company.	(G) Industrial adhesive .....	(G) Hydroxy functional triglyceride polymer with glycerol mono-ester and 1,1'-methylenebis [isocyanatobenzene].
P-16-0332 .....	4/21/2016	7/20/2016	CBI .....	(G) Component of coating .....	(G) Carbomonocycle phosphate metal salt.
P-16-0334 .....	4/22/2016	7/21/2016	Lamberti USA, Inc.	(G) Additive for industrial purposes.	(G) Polymeric amide.
P-16-0335 .....	4/22/2016	7/21/2016	Lamberti USA, Inc.	(G) Additive for industrial purposes.	(G) Polymeric amide.
P-16-0336 .....	4/22/2016	7/21/2016	CBI .....	(G) Fuel additive—destructive use	(G) Polyolefin ester.
P-16-0337 .....	4/25/2016	7/24/2016	CBI .....	(S) Monomer .....	(G) Aliphatic acrylate.
P-16-0338 .....	4/26/2016	7/25/2016	CBI .....	(G) Dyestuff .....	(G) Substituted xanthene derivative.
P-16-0339 .....	4/26/2016	7/25/2016	CBI .....	(G) Dyestuff .....	(G) Azo derivatives.
P-16-0340 .....	4/26/2016	7/25/2016	Solazyme, Inc ...	(G) Feedstock for oleochemical industry.	(G) Glycerides, c8-18 and c18 unsaturated, from fermentation.
P-16-0340 .....	4/26/2016	7/25/2016	Solazyme, Inc ...	(G) Renewable oil source for fuels.	(G) Glycerides, c8-18 and c18 unsaturated, from fermentation.
P-16-0341 .....	4/27/2016	7/26/2016	Perstorp Polyols	(G) Elastomer .....	(S) 2-oxepanone, homopolymer, ester with 1,6-hexanediol.
P-16-0341 .....	4/27/2016	7/26/2016	Perstorp Polyols	(S) Industrial coatings .....	(S) 2-oxepanone, homopolymer, ester with 1,6-hexanediol.
P-16-0341 .....	4/27/2016	7/26/2016	Perstorp Polyols	(S) Adhesive components .....	(S) 2-oxepanone, homopolymer, ester with 1,6-hexanediol.
P-16-0342 .....	4/27/2016	7/26/2016	CBI .....	(S) Modified acrylic polymer used as a dispersant for deflocculation of pigments in industrial paints and coatings.	(G) Modified acrylic polymer.
P-16-0343 .....	4/27/2016	7/26/2016	CBI .....	(S) Modified urethane polymer used as a dispersant for deflocculation of pigments in industrial paints and coatings.	(G) Modified urethane polymer.
P-16-0344 .....	4/27/2016	7/26/2016	CBI .....	(S) Modified acrylic polymer used as a dispersant for deflocculation of pigments in industrial paints and coatings.	(G) Modified urethane polymer.
P-16-0345 .....	4/28/2016	7/27/2016	CBI .....	(G) Processing aid .....	(G) Acrylamide, polymer with methacrylic acid derivatives.

For the 31 NOCs received by EPA during this period, Table 2 provides the following information (to the extent that such information is not claimed as CBI):

The EPA case number assigned to the NOC; the date the NOC was received by EPA; the projected date of commencement provided by the

submitter in the NOC; and the chemical identity.

TABLE 2—NOCs RECEIVED FROM APRIL 1, 2016 TO APRIL 29, 2016

Case No.	Date received	Projected date of commencement	Chemical identity
P-05-0522	4/26/2016	3/31/2016	(S) [1,1'-biphenyl]-4-carboxaldehyde.
P-11-0243	4/1/2016	3/12/2016	(G) Alkanedioic acid polymer with alkanediol and diisocyanatohexane.
P-13-0670	4/25/2016	4/4/2016	(G) Alkyl-[4-(carbomonocyclesubstituted)carbomonocycle]-(dialkylhydroxycarbomonocycle)alkane derivative.
P-13-0671	4/25/2016	4/4/2016	(G) Alkyl-[4-(carbomonocyclesubstituted)carbomonocycle]-(dialkylhydroxycarbomonocycle)alkane derivative.
P-14-0166	4/4/2016	3/3/2016	(G) Fatty acid amide.
P-14-0185	4/4/2016	3/5/2016	(G) Fatty acid amide acetate.
P-14-0800	4/22/2016	4/11/2016	(G) Solvent red 252.
P-15-0046	4/12/2016	4/1/2016	(S) Propanol, oxybis, polymer with bis(isocyanatomethyl)cyclohexane and alpha-hydro-omega-hydroxypoly(oxy-1,4-butanediyl).
P-15-0074	4/8/2016	3/30/2016	(G) Trisiloxane alkoxylate.
P-15-0329	4/12/2016	3/12/2016	(S) Urea, n, n'-1,6-hexanediybis[n'-[(1s)-1-phenylethyl]-].
P-15-0382	4/29/2016	4/20/2016	(G) Polyitaconic acid, sodium zinc salt.
P-15-0409	4/5/2016	3/24/2016	(G) Substituted alkanolamine ether.
P-15-0515	4/19/2016	4/7/2016	(G) 2-propenoic acid, 2-methyl, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with dialkylamine, carboxylate salt.
P-15-0567	4/8/2016	3/10/2016	(S) Hexanedioic acid, polymer with 1,?6-?hexanediol, 1,?3-?isobenzofurandione, 5-?isocyanato-?1-?(isocyanatomethyl)?-?1,?3,?3-?trimethylcyclohexane and 1,?2,?3-?propanetriol, 2-?hydroxyethyl acrylate-?blocked.
P-15-0623	4/18/2016	4/14/2016	(G) Fatty acids, polymers with bisphenol a, nutshell liq., epichlorohydrin, alkylenediamine, formaldehyde and polyalkylenepolyamine.
P-15-0733	4/4/2016	3/13/2016	(G) Alkane carboxylic acid, hydroxy, hydroxyalkyl-alkyl, polymer with .alpha.-hydro-omega.-hydroxypoly(oxy-1,2-ethanediyl) ether with alkyl-(hydroxyalkyl)-alkanediol (x:1), .alpha.-hydro-omega.-hydroxypoly[oxy(alkyl-alkyldiyl)] and alkylenebis [isocyanatoalkane],-blocked.
P-15-0737	4/12/2016	4/7/2016	(G) Diammonium salt of phosphate methacrylate.
P-15-0737	4/12/2016	4/7/2016	(G) Monoammonium salt of phosphate methacrylate.
P-15-0769	4/14/2016	4/4/2016	(G) Polyurethane silane.
P-16-0009	4/1/2016	3/9/2016	(S) Fatty acids, castor-oil, esters with polyethylene glycol ether with glycerol (3:1).
P-16-0026	4/11/2016	4/3/2016	(G) Amine functional epoxy, organic acid salt.
P-16-0100	4/5/2016	3/23/2016	(G) Substituted heteropolycyclic derivs.
P-16-0107	4/14/2016	3/27/2016	(G) Aromatic polycarboxylic acid, polymer with alkyldiol, alkyldioic acid, aromatic polyisocyanate, substituted alkyldiol, compd. with alkylamine.
P-16-0108	4/28/2016	3/17/2016	(G) Carbonic acid, polymer with, 5-isocyanato-1-(isocyanatomethyl)- 1,3,3-trimethylcyclohexane, 2-hydroxyethyl acrylate-blocked.
P-16-0115	4/6/2016	3/27/2016	(G) 2-propanediol, polymer with 2-ethyloxirane, oxirane and cycloaliphatic anhydride, polymer with 2,2??-[1-methylethylidene]bis(4,1-phenyleneoxymethylene)]bis[oxirane].
P-16-0121	4/18/2016	4/13/2016	(G) Acrylic acid polymer with polyethylene glycol.
P-16-0142	4/26/2016	4/20/2016	(G) Amine salted polyacrylate.
P-16-0149	4/18/2016	4/15/2016	(G) 2-alkenoic acid, alkyl ester, polymer with ethenyl benzene, alkyl 2-alkyl alkenoate and alkene carboxylic acid.
P-16-0159	4/25/2016	3/31/2016	(G) Hexasodium 5-{4-[3-(8-benzoylamino-1-hydroxy-3,6-disulfonatonaphthalene-2-ylidiazeryl)-4-sulfonatoanilino]-6-(2-sulfonatoethylamino)-1,3,5-triazine-2-ylamino}benzene-1,3-dicarboxylate.
P-16-0174	4/29/2016	4/19/2016	(S) Butanedioic acid, 2-methylene-, telomer with phosphinic acid and sodium 4-ethenylbenzenesulfonate (1:1), sodium salt.
P-16-0175	4/28/2016	4/18/2016	(S) Naphthalene, eicosyl-

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: May 25, 2016.

**Pamela Myrick,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2016-13028 Filed 6-1-16; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, May 31, 2016, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Richard Cordray (Director, Consumer Financial Protection Bureau), seconded by Vice Chairman Thomas M. Hoenig, concurred in by Paul M. Nash (Acting in the place and stead of Director Thomas J. Curry (Comptroller of the Currency)), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice

to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: May 31, 2016.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2016-13159 Filed 5-31-16; 4:15 pm]

**BILLING CODE P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Termination; 10325 First Commercial Bank of Florida, Orlando, FL

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10325 First Commercial Bank of Florida, Orlando, FL (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of First Commercial Bank of Florida (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective June 1, 2016 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: May 25, 2016.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 2016-12956 Filed 6-1-16; 8:45 am]

**BILLING CODE 6714-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice to All Interested Parties of the Termination of the Receivership of 10310, Western Commercial Bank Woodland Hills, CA

*Notice is hereby given* that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Western Commercial Bank, Woodland Hills, CA ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of Western Commercial Bank on November 5, 2010. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: May 25, 2016.

Federal Deposit Insurance Corporation

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 2016-12955 Filed 6-1-16; 8:45 am]

**BILLING CODE 6714-01-P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the

agreements are available through the Commission's Web site ([www.fmc.gov](http://www.fmc.gov)) or by contacting the Office of Agreements at (202)-523-5793 or [tradeanalysis@fmc.gov](mailto:tradeanalysis@fmc.gov).

*Agreement No.:* 012355-001.

*Title:* CMA CGM/SL Gulf Bridge Express Slot Charter Agreement.

*Parties:* CMA CGM, S.A. and Maersk Line A/S DBA Sealand.

*Filing Party:* Draughn B. Arbona, Esq.; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

*Synopsis:* The amendment changes the name of the Maersk entity participating in the Agreement and reduces the number of slots being chartered.

*Agreement No.:* 012413.

*Title:* MOL/ELJSA Slot Exchange Agreement.

*Parties:* Mitsui O.S.K. Lines, Ltd and Evergreen Line Joint Service Agreement.

*Filing Party:* Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 799 9th Street NW., Suite 500; Washington, DC 20001.

*Synopsis:* The agreement authorizes the parties to exchange slots in the trade between the U.S. East Coast on the one hand, and the People's Republic of China (including Hong Kong), Taiwan, Vietnam, Singapore, Sri Lanka, Egypt, and Panama, on the other hand.

*Agreement No.:* 012414.

*Title:* LGL/Glovis Space Charter Agreement.

*Parties:* Liberty Global Logistics LLC and Hyundai Glovis Co., Ltd.

*Filing Party:* Wayne R. Rohde, Esq., Cozen O'Conner; 1200 Nineteenth Street NW., Washington, DC 20036.

*Synopsis:* The agreement authorizes the parties to charter space for ro/ro cargo to/from each other in the trade between the U.S. East Coast on the one hand, and Portugal, Spain, France, Italy, Greece, Turkey, Lebanon, Egypt, Jordan, Saudi Arabia, Oman, UAE, Bahrain and Kuwait on the other hand.

By Order of the Federal Maritime Commission.

Dated: May 27, 2016.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2016-13027 Filed 6-1-16; 8:45 am]

**BILLING CODE 6731-AA-P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Notice

May 31, 2016.

**TIME AND DATE:** 2:00 p.m., Monday, June 13, 2016.

**PLACE:** The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania



Avenue NW., Washington, DC 20004  
(enter from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument in the matter *Secretary of Labor on behalf of McGary, et al. v. The Marshall County Coal Company, et al.*, Docket Nos. WEVA 2015–583–D, et al. (Issues include whether the Judge erred in ruling that certain statements by mine management constituted an interference with miners' safety rights.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

**CONTACT PERSON FOR MORE INFO:**

Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

**Sarah L. Stewart,**

*Deputy General Counsel.*

[FR Doc. 2016–13117 Filed 5–31–16; 4:15 pm]

**BILLING CODE 6735–01–P**

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

**Sunshine Act Notice**

May 31, 2016.

**TIME AND DATE:** 2:00 p.m., Tuesday, June 14, 2016.

**PLACE:** The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in open session: *Secretary of Labor on behalf of McGary, et al. v. The Marshall County Coal Company, et al.*, Docket Nos. WEVA 2015–583–D, et al. (Issues include whether the Judge erred in ruling that certain statements by mine management constituted an interference with miners' safety rights.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

**CONTACT PERSON FOR MORE INFO:**

Emogene Johnson (202) 434–9935/(202)

708–9300 for TDD Relay/1–800–877–8339 for toll free.

**Sarah L. Stewart,**

*Deputy General Counsel.*

[FR Doc. 2016–13118 Filed 5–31–16; 4:15 pm]

**BILLING CODE 6735–01–P**

**FEDERAL RESERVE SYSTEM**

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

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 2016.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528. Comments can also be sent electronically to [Comments.applications@rich.frb.org](mailto:Comments.applications@rich.frb.org):

1. *Blue Ridge Bankshares, Inc.*, Luray, Virginia; to merge with River Bancorp, Inc., and thereby indirectly acquire River Community Bank, National Association, both in Martinsville, Virginia.

Board of Governors of the Federal Reserve System, May 27, 2016.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2016–13005 Filed 6–1–16; 8:45 am]

**BILLING CODE 6210–01–P**

**FEDERAL RESERVE SYSTEM**

**Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 16, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to [Applications.Comments@atl.frb.org](mailto:Applications.Comments@atl.frb.org):

1. *Michael William Mathis, Sr., Sharon L. Mathis, Michael William Mathis, Jr., Mark Coppage Mathis, Victoria Lynn Mathis, and Norman Van Lambert*, all of Rome, Georgia, to retain voting shares of RCB Financial Corporation, and thereby indirectly retain voting shares of River City Bank, both in Rome, Georgia.

Board of Governors of the Federal Reserve System, May 27, 2016.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2016–13007 Filed 6–1–16; 8:45 am]

**BILLING CODE 6210–01–P**

## GENERAL SERVICES ADMINISTRATION

[Notice—MA—2016—03; Docket No. 2016—0002, Sequence No. 12]

### Federal Travel Regulation (FTR); Relocation Allowances—Requirement To Report Agency Payments for Relocation

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Notice of a bulletin.

**SUMMARY:** The purpose of this notice is to inform agencies that FTR Bulletin 16–04, pertaining to the Requirement to Report Agency Payments for Relocation, is now available online at [www.gsa.gov/ftbulletin](http://www.gsa.gov/ftbulletin).

**DATES:** Effective: June 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Miller, Office of Asset and Transportation Management (MA), Office of Government-wide Policy, GSA, at 202–501–3822 or via email at [rodney.miller@gsa.gov](mailto:rodney.miller@gsa.gov). Please cite FTR Bulletin 16–04.

**SUPPLEMENTARY INFORMATION:** Under 5 U.S.C. 5707(c), as implemented in the Federal Travel Regulation, Part 300–70, Subpart A—Requirement To Report Agency Payments for Employee Travel and Relocation, the Administrator of General Services is required to collect data on total agency payments for travel, transportation, and relocation expenses every year. This bulletin provides guidance to agencies that spent more than \$5 million on travel and transportation payments, including relocation costs, and the requirement procedures to report the data to GSA. FTR Bulletin 16–04 and all other FTR Bulletins can be found at [www.gsa.gov/ftbulletin](http://www.gsa.gov/ftbulletin).

**Troy Cribb,**

*Associate Administrator, Office of  
Government-wide Policy.*

[FR Doc. 2016–12888 Filed 6–1–16; 8:45 am]

**BILLING CODE 6820–14–P**

## OFFICE OF GOVERNMENT ETHICS

### Agency Information Collection Activities; Submission for OMB Review; Proposed Collection; Comment Request for Unmodified Qualified Trust Model Certificates and Model Trust Documents

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Notice.

**SUMMARY:** The U.S. Office of Government Ethics (OGE) is publishing

this second round notice and requesting comment on the twelve executive branch OGE model certificates and model documents for qualified trusts. OGE intends to submit these forms to the Office of Management and Budget (OMB) for review and approval of a three-year extension under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). OGE is proposing no changes to these forms at this time.

**DATES:** Written comments by the public and the agencies on this proposed extension are invited and must be received on or before July 5, 2016.

**ADDRESSES:** You may submit comments on this paperwork notice to the Office of Management and Budget, Attn: Desk Officer for OGE, via fax at 202–395–6974 or email at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Paul D. Ledvina, Agency Clearance Officer at the U.S. Office of Government Ethics; telephone: 202–482–9247; TTY: 800–877–8339; FAX: 202–482–9237; Email: [pledvina@oge.gov](mailto:pledvina@oge.gov). The model Certificate of Independence and model Certificate of Compliance for qualified trusts are codified in appendixes A and B to 5 CFR part 2634. Appendix C of 5 CFR part 2634 provides the Privacy Act Statement, Public Burden Statement and Paperwork Reduction Act Statement for the model certificates. Copies of the ten qualified trust model documents may be obtained, without charge, by contacting Mr. Ledvina.

**SUPPLEMENTARY INFORMATION:** The Office of Government Ethics intends to submit, shortly after this second round notice, all twelve qualified trust model certificates and model documents described below (all of which are included under OMB paperwork control number 3209–0007) for a three-year extension of approval by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). The current paperwork approval for the model certificates and model trust documents, last granted by OMB in 2013, is scheduled to expire at the end of November 2016. OGE is proposing no changes to the two model qualified trust certificates and the ten model trust documents at this time. OGE is the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act of 1978 (EIGA). Presidential nominees to executive branch positions subject to Senate confirmation and any other executive branch officials may seek OGE approval for EIGA qualified blind or diversified trusts as one means to be used to avoid conflicts of interest.

OGE is the sponsoring agency for the model certificates and model trust documents for qualified blind and diversified trusts of executive branch officials set up under section 102(f) of the Ethics in Government Act, 5 U.S.C. app. § 102(f), and OGE's implementing financial disclosure regulations at subpart D of 5 CFR part 2634. The various model certificates and model trust documents are utilized by OGE and settlors, trustees and other fiduciaries in establishing and administering these qualified trusts.

There are two categories of information collection requirements that OGE plans to submit for renewed paperwork approval, each with its own related reporting model certificates or model trust documents which are subject to paperwork review and approval by OMB. The OGE regulatory citations for these two categories, together with identification of the forms used for their implementation, are as follows:

i. Qualified trust certifications—5 CFR 2634.404(f) and (g), 2634.405(c) and (d), 2634.407, 2634.408(d)(4), 2634.410, 2634.414 and appendixes A and B to part 2634 (the two implementing forms, the Certificate of Independence and Certificate of Compliance, are codified respectively in the cited appendixes); and

ii. Qualified trust communications and model provisions and agreements—5 CFR 2634.404(f), 2634.407(a), 2634.408(a)–(c), 2634.407 and 2634.414 (the ten implementing forms are the: (A) Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications); (B) Model Qualified Blind Trust Provisions; (C) Model Qualified Diversified Trust Provisions; (D) Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries); (E) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (F) Model Qualified Diversified Trust Provisions (Hybrid Version); (G) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries); (H) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (I) Model Confidentiality Agreement Provisions (For Use in the Case of a Privately Owned Business); and (J) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities)).

The communications formats and the confidentiality agreements (items ii.(A), (I) and (J) above), once completed, would not be available to the public because they contain sensitive,

confidential information. All the other completed model trust certificates and model trust documents (except for any trust provisions that relate to the testamentary disposition of trust assets) are retained and made publicly available based upon a proper request under EIGA (by filling out an OGE Form 201 access form) until the periods for retention of all other reports (usually the OGE Form 278 Public Financial Disclosure Reports) of the individual establishing the trust have lapsed (generally six years after the filing of the last other report). See 5 CFR 2634.603(g)(2) of OGE's executive branch financial disclosure regulation.

The U.S. Office of Government Ethics administers the qualified trust program for the executive branch. At the present time, there are no active filers using the trust model certificates and documents. However, OGE intends to submit to OMB a request for extension of approval for two reasons. First, under OMB's implementing regulations for the Paperwork Reduction Act, at 5 CFR 1320.3(c)(4)(i), any recordkeeping, reporting or disclosure requirement contained in a sponsoring agency rule of general applicability is deemed to meet the minimum threshold of ten or more persons. Second, OGE does anticipate possible limited use of these forms during the forthcoming three-year period 2016–2019. Therefore, the estimated burden figures, representing branchwide implementation of the forms, will remain the same as previously reported by OGE in its prior first and second round paperwork renewal notice for the trust forms (77 FR 76293–76294 (December 27, 2012) and 78 FR 40144–40146 (July 3, 2013)). The estimate is based on the amount of time imposed on a trust administrator or private representative.

i. Trust Certificates:

A. Certificate of Independence: Total filers (executive branch): 5; private citizen filers (100%): 5; private citizen burden hours (20 minutes/certificate): 2.

B. Certificate of Compliance: Total filers (executive branch): 10; private citizen filers (100%): 10; private citizen burden hours (20 minutes/certificate): 3; and

ii. Model Qualified Trust Documents:

A. Blind Trust Communications: Total users (executive branch): 5; private citizen users (100%): 5; communications documents (private citizens): 25 (based on an average of five communications per user, per year); private citizen burden hours (20 minutes/communication): 8.

B. Model Qualified Blind Trust: Total users (executive branch): 2; private

citizen users (100%): 2; private citizen burden hours (100 hours/model): 200.

C. Model Qualified Diversified Trust: Total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (100 hours/model): 100.

D.–H. Of the five remaining model qualified trust documents: Total users (executive branch): 2; private citizen users (100%): 2; private citizen burden hours (100 hours/model): 200.

I.–J. Of the two model confidentiality agreements: Total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (50 hours/agreement): 50.

However, the total annual reporting hour burden on filers themselves is zero and not the 563 hours estimated above because OGE's estimating methodology reflects the fact that all respondents hire private trust administrators or other private representatives to set up and maintain the qualified blind and diversified trusts. Respondents themselves, typically incoming private citizen Presidential nominees, therefore incur no hour burden. The estimated total annual cost burden to respondents resulting from the collection of information is \$1,000,000. Those who use the model documents for guidance are private trust administrators or other private representatives hired to set up and maintain the qualified blind and diversified trusts of executive branch officials who seek to establish such qualified trusts. The cost burden figure is based primarily on OGE's knowledge of the typical trust administrator fee structure (an average of 1 percent of total assets) and OGE's experience with administration of the qualified trust program. The \$1,000,000 annual cost figure is based on OGE's estimate of an average of five possible active trusts anticipated to be under administration for each of the next three years with combined total assets of \$100,000,000. However, OGE notes that the \$1,000,000 figure is a cost estimate for the overall administration of the trusts, only a portion of which relates to information collection and reporting. For want of a precise way to break out the costs directly associated with information collection, OGE is continuing to report to OMB the full \$1,000,000 estimate for paperwork clearance purposes.

On March 4, 2016, OGE published a first round notice of its intent to request paperwork clearance for the proposed unmodified qualified trust certificates and modified model trust documents. See 81 FR 11566–11567. OGE did not receive any responses to that notice.

In this second notice, public comment is again invited on the model qualified

trust certificates and model trust documents, and underlying regulatory provisions, as set forth in this notice, including specific views on the need for and practical utility of this set of collections of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of the OMB paperwork approval for the set of the various existing qualified trust model certificates, the model communications package, and the model trust documents. The comments will also become a matter of public record.

Approved: May 27, 2016.

**Walter M. Shaub, Jr.**

*Director, Office of Government Ethics.*

[FR Doc. 2016–13008 Filed 6–1–16; 8:45 am]

BILLING CODE 6345–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Informational Meeting: The Importation and Exportation of Infectious Biological Agents, Infectious Substances and Vectors; Public Webcast

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of public webcast.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS) is hosting a public webcast to address import and export permit regulations for infectious biological agents, infectious substances, and vectors; and import and export permit exemptions. Presenters for this webcast will include representatives from the U.S. Department of Transportation (DOT), United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS), CDC Division of Global Migration and Quarantine, U.S. Customs and Border Protection, U.S. Department of Commerce, U.S. Food and Drug Administration, HHS/Office of the Assistant Secretary for Preparedness and Response/Biomedical Advanced Research and Development Authority (BARDA), U.S. Fish and Wildlife

Service, and the Public Health Agency of Canada.

**DATES:** The webcast will be held over two days, August 3, 2016 from 12 p.m. to 4 p.m. EDT and August 4, 2016 from 12:00 p.m. to 4:00 p.m. Registration instructions are found on the HHS/CDC Import Permit Program Web site, <http://www.cdc.gov/od/eaipp/importApplication/agents.htm>.

**ADDRESSES:** The webcast will be broadcast from the Centers for Disease Control and Prevention, 1600 Clifton Road NE., Atlanta, Georgia 30329.

**FOR FURTHER INFORMATION CONTACT:** Von McClee, Division of Select Agents and Toxins, Office of Public Health Preparedness and Response, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS A-46, Atlanta, GA 30333; phone: 404-718-2000; email: [lsrat@cdc.gov](mailto:lsrat@cdc.gov).

**SUPPLEMENTARY INFORMATION:** This webcast is an opportunity for all interested parties (e.g., academic institutions and biomedical centers, commercial manufacturing facilities, federal, state, and local laboratories, including clinical and diagnostic laboratories, research facilities, exhibition facilities, and educational facilities) to obtain specific guidance and information regarding import and export permit regulations. The webcast will also provide assistance to those interested in applying for an import or export permit (or license) from federal agencies within the United States.

Instructions for registration are found on the HHS/CDC Import Permit Program Web site, <http://www.cdc.gov/od/eaipp/>

[importApplication/agents.htm](http://importApplication/agents.htm). Participants must register by July 15, 2016. This is a webcast only event and there will be no on-site participation at the HHS/CDC broadcast facility.

Dated: May 27, 2016.

**Veronica Kennedy,**  
*Acting Executive Secretary, Centers for Disease Control and Prevention.*

[FR Doc. 2016-13053 Filed 6-1-16; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Community Living**

**Agency Information Collection Activities; Submission for OMB Review; Comment Request; University Centers for Excellence in Developmental Disabilities Education, Research, and Service—Annual Report**

**AGENCY:** Administration for Community Living, HHS.

**ACTION:** Notice.

**SUMMARY:** The Administration on Intellectual and Developmental Disabilities (AIDD), Administration for Community Living (ACL) is announcing an opportunity to comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for

public comment in response to the notice. This notice collects comments on the information collection requirements relating to the continuation of an existing collection for University Centers for Excellence in Developmental Disabilities Education, Research, and Service.

**DATES:** Submit written comments on the collection of information by August 1, 2016.

**ADDRESSES:** Submit written comments on the collection of information by email to [Valerie.Bond@acl.hhs.gov](mailto:Valerie.Bond@acl.hhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Valerie Bond by email at [Valerie.Bond@acl.hhs.gov](mailto:Valerie.Bond@acl.hhs.gov) or 202.795-7311.

**SUPPLEMENTARY INFORMATION:** Section 104 (42 U.S.C. 15004) of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act of 2000) directs the Secretary of Health and Human Services to develop and implement a system of program accountability to monitor the grantees funded under the DD Act of 2000. The program accountability system shall include the National Network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service (UCEDDs) authorized under Part D of the DD Act of 2000. In addition to the accountability system, Section 154(e) (42 U.S.C. 15064) of the DD Act of 2000 includes requirements for a UCEDD Annual Report.

ACL estimates the burden of this collection of information as follows:

**Annual Burden Estimates**

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
UCEDD Annual Report .....	67	1	1,412	94,604

Estimated Total Annual Burden Hours: 94,604.

Dated: May 25, 2016.

**Kathy Greenlee,**  
*Administrator & Assistant Secretary for Aging.*

[FR Doc. 2016-13020 Filed 6-1-16; 8:45 am]

**BILLING CODE 4154-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Community Living**

**Agency Information Collection Activities; Submission for OMB Review; Comment Request; Senior Medicare Patrol (SMP) Program Outcome Measurement**

**AGENCY:** Administration for Community Living, HHS.

**ACTION:** Notice.

**SUMMARY:** The Administration for Community Living (ACL) is announcing that the proposed collection of

information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by July 5, 2016.

**ADDRESSES:** Submit written comments on the collection of information by fax 202.395.5806 or by email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Attn: OMB Desk Officer for ACL.

**FOR FURTHER INFORMATION CONTACT:** Phillip McKoy at 202.795.7397 or email: [phillip.mckoy@acl.hhs.gov](mailto:phillip.mckoy@acl.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. Grantees are required by Congress to provide information for use in program monitoring and for Government Performance and Results Act (GPRA) purposes. This information collection reports the number of active volunteers, issues and inquiries received, other SMP program outreach activities, and the number of Medicare dollars recovered, among other SMP performance outcomes. This information is used as the primary method for monitoring the SMP Projects. ACL estimates the burden of this collection of information as follows: Respondents: 54 SMP grantees at 23 hours per month (276 hours per year, per grantee). Total Estimated Burden Hours: 7,452 hours per year.

Dated: May 25, 2016.

**Kathy Greenlee,**  
Administrator and Assistant Secretary for Aging.

[FR Doc. 2016-12868 Filed 6-1-16; 8:45 am]

**BILLING CODE 4154-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2016-N-0001]

**Collaborating To Strengthen Food, Drug, and Medical Device Safety Systems; Notice of Conference**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of conference.

**SUMMARY:** The Food and Drug Administration (FDA) Philadelphia District Office, in co-sponsorship with the Association of Food and Drug Officials (AFDO), and the North Central Association of Food and Drug Officials, is announcing a conference entitled “Collaborating to Strengthen Food, Drug, and Medical Device Safety Systems.” This conference is intended to provide information about FDA drug and device regulation to the regulated industry.

**DATES:** The conference will be held on June 25 to June 29, 2016. See

**SUPPLEMENTARY INFORMATION** for meeting times.

**ADDRESSES:** The Omni William Penn Hotel, 530 William Penn Pl., Pittsburgh, PA 15219. Attendees are responsible for their own accommodations.

**FOR FURTHER INFORMATION CONTACT:** Randy Young, Association of Food and Drug Officials, 2550 Kingston Rd., Suite 311, York, PA 17402, 717-757-2888, FAX: 717-650-3650, [ryoung@afdo.org](mailto:ryoung@afdo.org).

**SUPPLEMENTARY INFORMATION:** FDA has made education of the food, feed, drug, and device manufacturing community a high priority to help ensure the quality of FDA-regulated products. The conference helps to achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which includes working closely with stakeholders and maximizing the availability and clarity of information for stakeholders and the public. The conference also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), as outreach activities by government Agencies to small businesses.

The conference helps fulfill the U.S. Department of Health and Human Services’ and FDA’s important mission to protect the public health. The conference will provide FDA-regulated drug and device entities with information on a number of topics concerning FDA requirements related to the production and marketing of drugs and/or devices. Topics for discussion include, but are not limited to the following:

- FDA Program Alignment
- Recalls from the Perspective of the District
- Inspection of Licensed Producers under the Marijuana for Medical Purposes Regulations (Health Canada)
- Foreign inspections
- Regulatory Intelligence
- FDA Inspections: Challenges and Opportunities (Working Luncheon)
- Drug Shortages
- Drug Supply Chain Act: Wholesale Drug Distributor and 3rd Party Logistics Provider
- Medical Device Single Audit Program
- Compliance Questions Panel

The Conference Web site is: <http://afdo.org/conference>. The meeting times are as follows:

Date	Meeting time
June 25 .....	8 a.m. to 5 p.m.
June 26 .....	8 a.m. to 6 p.m.
June 27 .....	8 a.m. to 5:30 p.m.
June 28 .....	8 a.m. to 5 p.m.
June 29 .....	8 a.m. to 11:30 a.m.

*Registration:* The AFDO registration fees cover the cost of facilities, materials, and breaks. Seats are limited and registration will close after the course is filled; therefore, please submit your registration as soon as possible.

Conference space will be filled in order of receipt of registration; those accepted will receive confirmation. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the conference, beginning at 7:30 a.m. The cost of registration follows:

Category	Cost of registration
Member .....	\$475
Non-Member .....	575
Additional Fee for Registration Postmarked After June 1, 2016 .....	100

To register, please complete and submit an AFDO conference registration form, available at <http://pitt.afdo.org/registration.html>, along with a check, money order payable to “AFDO”; the registrar will also accept Visa and MasterCard credit cards. Please mail your completed registration form and payment to: AFDO, 2550 Kingston Rd., Suite 311, York, PA 17402. To register online, please visit <http://pitt.afdo.org/registration.html> (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.) For more information on the conference, or for questions about registration, please contact Randy Young (see **FOR FURTHER INFORMATION CONTACT**), email inquiries will also be accepted at [afdo@afdo.org](mailto:afdo@afdo.org), or visit <http://www.afdo.org>.

If you need special accommodations due to a disability, please contact Randy Young (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the conference.

Dated: May 26, 2016.

**Leslie Kux,**  
Associate Commissioner for Policy.

[FR Doc. 2016-12942 Filed 6-1-16; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2016-P-0378]

**Determination That TRIVARIS (Triamcinolone Acetonide) Injectable Suspension, 80 Milligrams/Milliliters, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) has

determined that TRIVARIS (triamcinolone acetonide) injectable suspension, 80 milligrams/milliliters (mg/mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for triamcinolone acetonide injectable suspension, 80 mg/mL, if all other legal and regulatory requirements are met.

**FOR FURTHER INFORMATION CONTACT:**

Linda Jong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6288, Silver Spring, MD 20993-0002, 301-796-3977.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the “listed drug,” which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the “Approved Drug Products With Therapeutic Equivalence Evaluations,” which is known generally as the “Orange Book.” Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug’s NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, is the subject of NDA 22-220, held by

Allergan, and initially approved on June 16, 2008. TRIVARIS is indicated for sympathetic ophthalmia, temporal arteritis, uveitis, and ocular inflammatory conditions unresponsive to topical corticosteroids. TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, is currently listed in the “Discontinued Drug Product List” section of the Orange Book.

The Weinberg Group submitted a citizen petition dated January 28, 2016 (Docket No. FDA-2016-P-0378), under 21 CFR 10.30, requesting that the Agency determine whether TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, in the “Discontinued Drug Product List” section of the Orange Book. The “Discontinued Drug Product List” delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: May 27, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016-12949 Filed 6-1-16; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2014-D-0055]

**Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods; Draft Guidance for Industry; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance entitled “Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods.” The draft guidance, when finalized, will describe our views on voluntary short-term and long-term goals for sodium reduction in a variety of identified categories of foods that are commercially processed, packaged, or prepared. These goals are intended to address the excessive intake of sodium in the current population and promote improvements in public health.

**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 the draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on Issues 1 through 4 listed in section IV of this document by August 31, 2016. Submit either electronic or written comments on Issues 5 through 8 listed in section IV of this document by October 31, 2016.

**ADDRESSES:** You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are

solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2014-D-0055 for "Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods; Draft Guidance for Industry." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available

for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (HFS-255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

**FOR FURTHER INFORMATION CONTACT:** Kasey Heintz, Center for Food Safety and Applied Nutrition (HFS-255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240-402-1376.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction**

Many expert advisory panels have concluded that scientific evidence supports the value of reducing sodium intake in the general population (Ref. 1). Recent analysis, including the findings of the 2013 Institute of Medicine (IOM) report, "Sodium Intake in Populations: Assessment of Evidence" (IOM report), continue to support this conclusion (Ref. 2). The 2013 IOM report confirmed a positive relationship between higher levels of sodium intake and the risk of heart disease, and found substantial evidence of population benefit and no evidence of negative health effects associated with reductions in sodium intake down to 2,300 milligrams of

sodium per day (mg/day) (Ref. 2). Members of the committee which authored the 2013 IOM report also clarified in a subsequent publication that different groups using a variety of methods and data have obtained results consistent with the committee's analysis that current U.S. intake is excessive, that it should be reduced, and that reduction is expected to have significant public health benefit (Ref. 3). Moreover, the 2015 Dietary Guidelines Advisory Committee Sodium Working Group examined the relationship between sodium and blood pressure and other cardiovascular outcomes in adults, as well as sodium and blood pressure in children. The Committee's recommendations concurred with previous reports that sodium intake among the U.S. population remains high and that higher levels of sodium intake are associated with increased blood pressure and risk of cardiovascular disease (Ref. 4).

Multiple researchers have estimated the public health benefits associated with broad reduction in sodium intakes in the United States (Ref. 1). Reasonable reductions in average intake (modeled at a variety of intake levels below current intake, down to an average level of roughly 2,200 mg/day) have been estimated to result in tens of thousands fewer cases of heart disease and stroke each year, as well as billions of dollars in health care savings over time. A recent study (Ref. 5) used three epidemiological datasets to forecast the separate public health benefits of reducing the population's average sodium intake to 2,200 mg/day over 10 years. (This 2,200 mg/day final mean intake level was derived from intake values embedded in the sources of evidence used for the study.) Researchers found that this pattern of reduction would save between 280,000 and 500,000 premature deaths over 10 years; sustained sodium reduction would prevent additional premature deaths.

FDA is not conducting rulemaking with regard to sodium, and these goals are voluntary. Given the potentially significant benefits to public health, as well as FDA's role in safeguarding America's food supply and enabling consumers to choose healthy diets, we are committed to exploring effective and efficient strategies to promote sodium reduction in the food supply. We believe that these voluntary goals can be an effective means to achieve significant benefits to public health through sodium reduction in commercially processed, packaged, and prepared foods.



## II. Background

We are announcing the availability of a draft guidance for industry entitled “Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods.” (For purposes of this draft guidance, “commercially processed, packaged, and prepared foods” refers to processed, multiple-ingredient foods that have been packaged by a member of the food industry for direct sale to consumers or for use in restaurants and similar retail food establishments including, but not limited to, restaurants, or for resale to other members of the food industry, as well as foods that are prepared by food establishments for direct consumption.) The draft guidance provides information to the food industry on sodium reduction, expressed as measurable voluntary goals for sodium content (from sodium chloride, commonly called “salt,” as well as other sodium-containing ingredients) in commercially processed, packaged, and prepared foods. Approximately 75 percent of sodium consumed by Americans is added to foods before they are sold (Ref. 6). Thus, the goals are intended to promote reductions in the amount of sodium added during processing, manufacturing, and preparation, especially for uses not necessary for microbial safety, stability, and/or physical integrity. We particularly encourage attention by food manufacturers whose products make up a significant proportion of national sales in one or more categories and restaurant chains that are national or regional in scope.

Broad adoption of these voluntary recommendations by the industry members would create a meaningful reduction in population intake over time and support adjustment of consumer taste preferences. We recognize that many companies have initiated sodium reduction efforts and have made commitments on their own. The voluntary goals are intended to support ongoing efforts, including progress that has already been made by industry. This approach also builds on other efforts such as an initiative by New York City in partnership with local and State health departments and health organizations and international approaches from foreign governments such as Canada and the United Kingdom. The voluntary goals are intended to provide a shared framework for describing and analyzing the success of voluntary reduction efforts by various industry stakeholders and to promote

continued discussion on sodium reduction opportunities. The guidance is intended to help achieve public health goals and see safe, gradual, and broadly distributed change over time across the full range of commercially processed, packaged, and prepared foods. To accomplish these goals, discussion and collaboration among FDA, Federal partners, the food industry, consumers, and other stakeholders will be essential.

We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of the FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You may use an alternate approach to reducing sodium as long as these approaches satisfy the requirements of the applicable statutes and regulations.

The draft guidance provides our tentative views with respect to identifying challenging, yet feasible, target mean and upper bound concentrations of sodium (referred to in this document as “sodium concentration goals”) across a wide variety of food categories. Our targets are based on our analysis of the current minimum and upper bound levels of sodium in a variety of identified food categories, available literature on the amount of salt needed for different functions in food, and discussions with experts on different food categories. Our milestone date for the short-term goals is the second year after publication of the final guidance. Our milestone date for the long-term goals is the 10th year after publication of the final guidance. The short-term targets are intended to be more easily achievable and as many as half of all products may already have achieved these interim targets. We recognize that the longer term targets are more difficult to achieve. We are aware that new ingredients capable of replacing some salt as well as other innovative strategies are being explored and more research and development may be needed. We also want to make clear that broader public health goals and maintenance of nutritional quality are important considerations in developing sodium reduction or reformulation strategies. For example, sodium reduction that relies on increases in added sugars would not be consistent with the public health goals of this guidance.

The sodium concentration goals in this voluntary draft guidance are intended to:

- Support increased food choice for consumers seeking to consume a diverse

diet that is consistent with recommendations of the 2015–2020 Dietary Guidelines for Americans;

- support the 2015–2020 Dietary Guidelines and the Healthy People 2020 recommendations of less than 2,300 mg per day for many individuals;
- provide shared goals as metrics (mg/100g) for voluntary reduction efforts by various industry stakeholders;
- support successful efforts already underway in the private sector to reduce sodium content;
- focus on total amount of sodium in a given food as opposed to any individual sodium-containing ingredient; and
- support and extend industry’s voluntary efforts to reduce sodium across the range of commercially processed, packaged, and prepared foods.

This guidance does not:

- Recommend specific methods and technologies for sodium reduction;
  - prescribe how much of any individual sodium-containing ingredient, such as salt or sodium nitrite, should be used in a formulation (in other words, we focus on the total amount of sodium in a given food);
  - focus on foods that contain only naturally occurring sodium (e.g., milk);
- or
- address salt that individuals add to their food.

As described in the notice “Approaches to Reducing Sodium Consumption; Establishment of Dockets; Request for Comments, Data, and Information” (76 FR 57050, September 15, 2011, referred to in this document as the 2011 request for comment), current sodium intake is substantially higher than what scientific and public health agencies and organizations have recommended in recent years. There have been a number of public and industry initiatives to reduce sodium intake, as well as initiatives in other countries (76 FR 57050 at 75051). In April 2010, IOM released a report titled “Strategies to Reduce Sodium Intake in the United States” which concluded that sodium intake, with the greatest contribution from salt, remains well above recommended levels (Ref. 1).

We recognize that a successful effort to reduce sodium intake requires information on a wide variety of topics, resulting from a genuine dialogue with all interested persons. To begin this dialogue, in 2011, FDA and the U.S. Department of Agriculture’s (USDA’s) Food Safety and Inspection Service (FSIS) opened parallel dockets for public comment and described the rationale for sodium intake reduction and identified 15 specific issues for



comment by all interested persons (76 FR 57050). These issues concerned multiple aspects of sodium reduction, including technical challenges and opportunities, implementation of reduction targets, and potential unintended consequences of reduction.

In November 2011, FDA and FSIS, in conjunction with other Federal agencies interested in sodium reduction efforts, including the Centers for Disease Control and Prevention and USDA's Agricultural Research Service and Center for Nutrition Policy and Promotion, sponsored a public meeting to provide a forum for discussion of the issues raised in the 2011 request for comment. FDA and FSIS together received approximately 1,500 comments, which addressed the following key themes:

- The need for slow and gradual change;
- the importance of acknowledging technical and regulatory constraints;
- the need for consumer acceptance and market viability of new or reformulated products;
- the critical importance of maintaining a safe food supply;
- the potential health consequences of broad sodium reduction;
- the costs associated with broad reductions in sodium;
- the potential for positive incentives to promote reformulation; and
- reports of successful reduction efforts.

We reviewed the comments submitted to the 2011 request for comments as well as other available information. In particular, we have considered the 2013 IOM report, "Sodium Intake in Populations: Assessment of Evidence." The IOM report concluded that evidence from studies on direct health outcomes associated with sodium intake was sufficient to support reducing excessive sodium intake, noting a benefit for cardiovascular disease outcomes if population sodium intake came down to a level of 2,300 mg/day. Ultimately, this report reaffirmed the association between sodium intake and health outcomes, which supports the need to engage in population-based efforts to lower excessive dietary sodium intakes (Ref. 2).

### III. 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 101 have

been approved under OMB control number 0910–0381. The collections of information in 21 CFR 101.11 have been approved under OMB control number 0910–0783.

### IV. Issues for Consideration

We developed the sodium targets using the best available representation of sodium in the food supply, based on product nutrition data from manufacturers and widely used sales data. We welcome comment on any issues related to the methods for developing the sodium targets and for implementation of this guidance. In particular, we are interested in comments on collecting and organizing these data into food categories, our methods for quantifying sodium content, refinements to the specific mean and upper bound targets based on adjustments of our category structures and data, and any challenges of implementing the voluntary goals. Please provide the reasoning behind your comments, including, where available, any data you may have.

1. Are there categories where foods have been grouped together that should be separated on the basis of different manufacturing methods or technical effects relating to the potential for sodium reduction? Conversely, are there categories which could be merged due to similar sodium functionality and potential for reduction? Are there foods that contribute to sodium intake that we have not effectively captured? Are the categories amenable for use by restaurant chains and if not, how should they be modified to make them amenable for use by restaurant chains?

2. Are the baseline sodium concentration values reasonably representative of the state of the food supply in 2010? For categories that do not appear representative, what food products are not adequately represented? Are there situations in which our method of quantification could lead to unrepresentative baseline values?

3. Are there categories for which the 2-year target concentration goals are infeasible? If so, why are these targets not feasible, *e.g.*, for technical reasons? What goals would be feasible in the short-term (2-year), and why? For reference, a supplementary memorandum to the docket is provided to further describe the type of information needed, "Target Development Example: Supplementary Memorandum to the Draft Guidance" (Ref. 7).

4. Are the short-term (2-year) timeframes for these goals achievable? If the timeframes are not achievable, what

timeframes would be challenging, but still achievable?

5. Are there categories for which the 10-year target concentration goals are infeasible? If so, why are these targets not feasible, *e.g.*, for technical reasons? What goals would be feasible in the long-term (10-year), and why? For reference, a supplementary memorandum to the docket is provided to further describe the type of information needed, "Target Development Example: Supplementary Memorandum to the Draft Guidance" (Ref. 7).

6. Are the long-term (10-year) timeframes for these goals achievable? If the timeframes are not achievable, what timeframes would be challenging, but still achievable?

7. What specific research needs or technological advances (if any) could enhance the food industry's ability to meet these goals? What are possible innovations in the area of sodium reduction and are there any unintended consequences associated with their use?

8. What amendments to FDA's standard of identity regulations in 21 CFR parts 130–169 are needed to facilitate sodium reduction by permitting alternative ingredients to be used in standardized foods? For example, amendments could include revisions to specific standards (*e.g.*, cheese or cheese products) and to the general requirements for foods named by use of a nutrient content claim (*e.g.*, "reduced sodium") and a standardized term under 21 CFR 130.10.

### V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either <http://www.fda.gov/FoodGuidances>, or <http://www.regulations.gov>. Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

### VI. References

The following references are on display in FDA's Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <http://www.regulations.gov>. FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to Web sites after this document publishes in the **Federal Register**.

1. IOM. "Strategies to Reduce Sodium Intake in the United States," Washington DC: The National Academies Press (2010).

2. IOM. "Sodium Intake in Populations: Assessment of Evidence Institutes of

Medicine (IOM) Report,” Washington DC: The National Academies Press (2013).

3. Strom, B. L., C. A. M. Anderson, and J. H. Ix. “Sodium Reduction in Populations: Insights From the Institute of Medicine Committee.” *Journal of the American Medical Association*. July 3, 2013; 310(1): 31–32.

4. “Scientific Report of the 2015 Dietary Guidelines Advisory Committee,” Part B, Chapter 6. <http://www.health.gov/dietaryguidelines/2015-scientific-report/>. Accessed March 9, 2015.

5. Coxson, P. G., N. R. Cook, M. Joffres, Y. Hong, et al. “Mortality Benefits From U.S. Population-Wide Reduction in Sodium Consumption.” *Hypertension*. March 2013; 61:564–570.

6. Mattes, R. D. and D. Donnelly. “Relative Constitutions of Dietary Sodium Sources.” *Journal of the American College of Nutrition*. August 1991;10(4):383–93.

7. FDA. “Memo: Target Development Example: Supplementary Memorandum to the Draft Guidance (2016).”

Dated: May 27, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016–12950 Filed 6–1–16; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2013–D–1543]

#### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Nonproprietary Naming of Biological Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by July 5, 2016.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910–NEW and title “Nonproprietary Naming of

Biological Products.” Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, [PRAStaff@fda.hhs.gov](mailto:PRAStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Guidance for Industry on Nonproprietary Naming of Biological Products OMB Control Number 0910–NEW

The guidance entitled “Guidance for Industry on Nonproprietary Naming of Biological Products” describes FDA’s current thinking on the need for biological products licensed under the Public Health Service Act (PHS Act) to bear a nonproprietary name that includes an FDA-designated suffix. There is a need to clearly identify biological products to facilitate pharmacovigilance and, for the purposes of safe use, to minimize inadvertent substitution. Accordingly, for biological products licensed under the PHS Act, FDA intends to designate a nonproprietary name that includes a core name and a distinguishing suffix. This naming convention is applicable to biological products previously licensed and newly licensed under section 351(a) or 351(k) of the PHS Act (42 U.S.C. 262(a) or 262(k)).

The guidance includes information collection by requesting that applicants propose a suffix composed of four lowercase letters for use as the distinguishing identifier included in the proper name designated by FDA at the time of licensure for biological products licensed under the PHS Act. The suffix will be incorporated in the nonproprietary name of the product. The guidance recommends that applicants should submit up to 10 proposed suffixes, in the order of the applicant’s preference. We also recommend including supporting analyses demonstrating that the proposed suffixes meet the factors described in the guidance for FDA’s consideration.

As indicated in table 1, we estimate that we will receive a total of 40 requests annually for the proposed proper name for biological products submitted under section 351(a) of the PHS Act, and 6 requests annually for the proposed proper name for biosimilar products and interchangeable products

submitted under section 351(k) of the PHS Act. The average burden per response (hours) is based on our experience with similar information collection requirements for applicants to create and submit suffix proposals to FDA and in consideration of comments received in response to our 60-day notice.

In the **Federal Register** of August 28, 2015 (80 FR 52296), we published a 60-day notice requesting public comment on the proposed collection of information. Most comments supported our proposal to designate a suffix. Many comments suggested that a meaningful, distinguishable suffix may help to improve pharmacovigilance, enhance safety, and facilitate identification between biological products. Some comments supported use of a random suffix to avoid creating an unfair advantage for specific manufacturers. Several comments stated that the current practices of FDA and non-FDA entities for identifying biosimilar and interchangeable products is sufficient for the purpose of pharmacovigilance, and designation of a suffix is not needed. One comment stated that FDA’s estimate of 6 hours to submit proposed suffixes is based only on the time needed to prepare the submission itself after the multiple suffixes have been selected. The comment further stated that because FDA suggests that each respondent submit three suggested suffixes for consideration, the time needed to do an analysis of each suffix would exceed 720 hours per suffix (based on their own company experience) or 2,160 hours total for the three suffixes.

In response to the comments we note that our estimated annual reporting burden results from information that would be submitted to us by applicants in order to facilitate Agency designation of a suffix as part of the proper name of a biological product. We estimated that sponsors would spend 2 hours completing the submission for each of the three suffixes, resulting in 6 hours as the average burden. This estimate is an annualized figure based on the average number of responses per respondent and the average burden per response over a 3-year period. We understand that there is a certain amount of research and other costs that an applicant might encounter in analyzing any proposed name for a biological product. We also recognize that the burden may be higher for some applicants and lower for other applicants based on a variety of factors specific to the applicant.

The comment suggesting that it will take 720 hours to complete an analysis

and submission for each suffix does not provide a basis by which the estimate was calculated or whether it is broadly applicable. We find this figure rather high and retain our original estimate of 6 hours. The latter figure is based on our familiarity with the average amount of time required by similar submissions to

FDA. At the same time, the comment also suggested that we failed to adequately account for the time spent on creating proposed suffixes. In consideration, therefore, we have revised our estimate upward to account for burden associated with creating and

submitting up to 10 proposed suffixes for designation, as reflected in table 1. FDA estimates the information collection burden as follows:  
*Description of Respondents:* Respondents to the collection are sponsors of biological product applications.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Information for the Proposed Proper Name for Biological Products Submitted Under Section 351(a) of the PHS Act .....	20	2	40	420	16,800
Information for the Proposed Proper Name for Biosimilar Products and Interchangeable Products Submitted Under Section 351(k) of the PHS Act .....	3	2	6	420	2,520
Total .....	.....	.....	.....	.....	19,320

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

The guidance also refers to previously approved collections of information found in FDA regulations. The collections of information for the submission of a biologics license application (BLA) and changes (supplements) to an approved application under 21 CFR part 601 have been approved under OMB control number 0910–0338. The collections of information for the submission of a BLA under section 351(k) of the PHS Act (biosimilar products and interchangeable products) have been approved under OMB control number 0910–0719.

Dated: May 26, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12885 Filed 6–1–16; 8:45 am]

BILLING CODE 4164–01–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**National Advisory Council on the National Health Service Corps; Notice of Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* National Advisory Council on the National Health Service Corps (NACNHSC).

*Dates and Times:* June 22, 2016 11:00 a.m.–5:00 p.m. EST.

*Place:* U.S. Department of Health and Human Services, Health Resources and

Services Administration, Conference Room #5E29, 5600 Fishers Lane, Rockville, Maryland 20857, Webinar and Conference Call Format.

*Status:* This advisory council meeting will be open to the public.

*Purpose:* The NACNHSC provides advice and recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) and, by designation, the Administrator of the Health Resources and Services Administration (HRSA) on a range of issues including identifying the priorities for the National Health Service Corps (NHSC) and policy revisions.

*Agenda:* The NACNHSC will refine the Council’s top priorities for the NHSC and will continue to work on the draft of formal recommendations to submit to the HHS Secretary and the HRSA Administrator. During the March 2016 NACNHSC meeting, the Council identified its priorities for the NHSC. The Council will continue the discussion on how the priorities meet the goals of the 2016 Bureau of Health Workforce Strategic Plan. The priority areas include, but are not limited to, telehealth, Medication Assisted Treatment (MAT) certification, mentorship and NHSC discipline expansion, specifically for mental and behavioral and oral health providers. The content of the agenda is subject to change prior to the meeting. The NACNHSC final agenda and call-in information will be available 3 days in advance of the meeting at <http://nhsc.hrsa.gov/corpsexperience/aboutus/nationaladvisorycouncil/meetingsummaries/index.html>.

**FOR FURTHER INFORMATION CONTACT:**

Please send requests for information to Dawn Smith, Bureau of Health Workforce, HRSA, in one of two ways: (1) Send a request to the following address: Dawn Smith, Bureau of Health Workforce, Health Resources and Services Administration, Room 14N70B, 5600 Fishers Lane, Rockville, Maryland 20857; or (2) send an email to [dsmith3@hrsa.gov](mailto:dsmith3@hrsa.gov).

**SUPPLEMENTARY INFORMATION:** Further information regarding the NACNHSC, including the roster of members and past meeting summaries, is available at: <http://nhsc.hrsa.gov/corpsexperience/aboutus/nationaladvisorycouncil/meetingsummaries/index.html>.

Members of the public and interested parties may request to participate in the meeting by contacting Dawn Smith via email at [dsmith3@hrsa.gov](mailto:dsmith3@hrsa.gov) to obtain access information. Access will be granted on a first come, first served basis. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed above at least 10 days prior to the meeting. Public participants may submit written statements in advance of the scheduled meeting. If you would like to provide oral public comment during the meeting, please register with Dawn Smith. Public comment will be limited to 3 minutes per speaker. Statements and comments can be addressed to Dawn Smith by emailing her at [dsmith@hrsa.gov](mailto:dsmith@hrsa.gov).

In addition, please be advised that committee members are given copies of all written statements submitted from the public. Any further public

participation will be solely at the discretion of the Chair, with approval of the Designated Federal Official. Registration through the designated contact for the public comment session is required.

**Jason E. Bennett,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2016-13052 Filed 6-1-16; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Neurological Disorders and Stroke; 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 Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, 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:* Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

*Date:* June 12-14, 2016.

*Time:* 6:00 p.m. to 11:30 a.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Alan P. Koretsky, Ph.D., Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders and Stroke, NIH, 35 Convent Drive, Room GF144, Bethesda, MD 20892, (301) 435-2232, [koretskya@ninds.nih.gov](mailto:koretskya@ninds.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: May 26, 2016.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-12895 Filed 6-1-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Drug Abuse; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel—Research Support Services for NIDA AIDS Program (1209).

*Date:* June 21, 2016.

*Time:* 10:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892-9550, (301) 435-1439, [lf33c.nih.gov](mailto:lf33c.nih.gov). (Catalogue of Federal Domestic Assistance Program No. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS).

Dated: May 26, 2016.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-12894 Filed 6-1-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Submission for OMB Review; 30-Day Comment Request; Population Assessment of Tobacco and Health (PATH) Study (NIDA)

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 11, 2016, pages 12913-12914 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA Submission@omb.eop.gov* or by fax to (202) 395-6974, Attention: NIH Desk Officer.

*Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the data collection plans and instruments or request more information on the proposed project, contact: Dr. Kevin P. Conway, Deputy Director, Division of Epidemiology, Services, and Prevention Research, NIDA, NIH, 6001 Executive Boulevard, Room 5185, Rockville, MD 20852; or call non-toll-free number (301) 443-8755 or Email your request, including your address to: [PATHprojectofficer@mail.nih.gov](mailto:PATHprojectofficer@mail.nih.gov). Formal requests for additional plans and instruments must be requested in writing.

*Proposed Collection:* Methodological Studies for the Population Assessment of Tobacco and Health (PATH) Study (NIDA), 0925-0675, expiration date 5/31/2016—Reinstatement Without Change—NIDA, NIH, in partnership

with the Food and Drug Administration (FDA).

*Need and Use of Information Collection:* This is a request to continue the Population Assessment of Tobacco and Health (PATH) Study's conduct of methodological studies in support of improvements in the Study's approaches for data and biospecimen collection. The PATH Study is a national longitudinal cohort study of

tobacco use behavior and health among the U.S. household population of adults age 18 and older and youth ages 12 to 17; the Study conducts annual or biannual interviews and collects biospecimens from adults and youth to inform FDA's regulatory actions under the Family Smoking Prevention and Control Act. The methodological studies under this reinstatement will continue to enhance the approaches used by the

PATH Study for data and biospecimen collections to obtain high quality and useful data; minimize respondent burden; and achieve and maintain high response, retention, and follow-up rates.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total annualized burden hours are 29,750.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
In-person and telephone surveys .....	Adults	5,000	1	90/60	7,500
	Youth	3,500	1	90/60	5,250
Web and smartphone/mobile phone surveys .....	Adults	5,000	1	90/60	7,500
	Youth	3,500	1	90/60	5,250
Focus groups and individual in-depth qualitative interviews	Adults	1,000	1	2	2,000
	Youth	1,000	1	2	2,000
Biospecimen collection .....	Adults	1,000	1	15/60	250
Total .....		20,000	20,000		29,750

Dated: May 27, 2016.

**Genevieve deAlmeida-Morris,**

*Project Clearance Liaison, NIDA, NIH.*

[FR Doc. 2016-12994 Filed 6-1-16; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Center for Scientific Review; 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:* Center for Scientific Review Special Emphasis Panel; Fellowships: Behavioral Neuroscience.

*Date:* June 23-24, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue NW., Washington, DC 20036.

*Contact Person:* Mei Qin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, [qinmei@csr.nih.gov](mailto:qinmei@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR16-052 Fogarty NDC R21.

*Date:* June 27-28, 2016.

*Time:* 7:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Fungai Chanetsa, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301-408-9436, [fungai.chanetsa@nih.hhs.gov](mailto:fungai.chanetsa@nih.hhs.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Academic Industrial Partnership.

*Date:* June 27, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301-237-9870, [xuguofen@csr.nih.gov](mailto:xuguofen@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Informatics.

*Date:* June 27, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

*Contact Person:* Claire E Gutkin, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3106, MSC 7808, Bethesda, MD 20892, 301-594-3139, [gutkincl@csr.nih.gov](mailto:gutkincl@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Macromolecular Structure and Function.

*Date:* June 27, 2016.

*Time:* 1:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

*Contact Person:* William A Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435-1726, [greenbergwa@csr.nih.gov](mailto:greenbergwa@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: ACL Injury, Biomechanics and Osteoarthritis.

*Date:* June 27, 2016.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Aftab A Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301-237-9931, [ansaria@csr.nih.gov](mailto:ansaria@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Infectious Diseases.

*Date:* June 27, 2016

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* John C Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435-2398, [pughjohn@csr.nih.gov](mailto:pughjohn@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS).

*Dated:* May 27, 2016.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-12996 Filed 6-1-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Nursing Research Special Emphasis Panel Fellowship Training Grants.

*Date:* June 9, 2016.

*Time:* 11:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 703, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Yujing Liu, Ph.D., MD., Chief, Office of Review, Office of Review, Division of Extramural Activities, National

Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Room 710, Bethesda, MD 20892, (301) 451-5152, [yujing\\_liu@nih.gov](mailto:yujing_liu@nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

*Dated:* May 26, 2016.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-12896 Filed 6-1-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Arthritis and Musculoskeletal and Skin 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:* Arthritis and Musculoskeletal and Skin Diseases Initial Review Group Arthritis and Musculoskeletal and Skin Diseases Clinical Trials Review Committee.

*Date:* June 21-22, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Kathy Salaita, Sc.D., Chief, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Blvd., Rm. 818, Bethesda, MD. 20892, 301-594-5033, [Kathy.Salaita@nih.gov](mailto:Kathy.Salaita@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

*Dated:* May 26, 2016.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-12893 Filed 6-1-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Drug Abuse; 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 on Drug Abuse Special Emphasis Panel; NIDA SEP for Medications Development.

*Date:* June 22, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

*Contact Person:* Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892-9550, (301) 451-3086, [ruizjf@nida.nih.gov](mailto:ruizjf@nida.nih.gov).

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Systems Biology Approaches in HIV/AIDS and Substance Use (R01).

*Date:* July 7, 2016.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892-9550, 301-402-6626, [gm145a@nih.gov](mailto:gm145a@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 27, 2016.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-12998 Filed 6-1-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; 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:* Center for Scientific Review Special Emphasis Panel; PAR13-280; Program Project: Mechanisms of Membrane Fusion.

*Date:* June 14, 2016.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* David R Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301)-435-1722, [jollieda@csr.nih.gov](mailto:jollieda@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroplasticity and Neurotransmitters Study Section.

*Date:* June 16-17, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

*Contact Person:* Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301-435-1259, [nadis@csr.nih.gov](mailto:nadis@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Cardiovascular and Respiratory Sciences Integrated Review Group; Myocardial Ischemia and Metabolism Study Section.

*Date:* June 23-24, 2016.

*Time:* 8:00 a.m. to 5:00 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:* Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, 301-435-5575, [hamannkj@csr.nih.gov](mailto:hamannkj@csr.nih.gov).

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.

*Date:* June 23-24, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

*Contact Person:* Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301-408-9866, [manospa@csr.nih.gov](mailto:manospa@csr.nih.gov).

*Name of Committee:* Oncology 2—Translational Clinical Integrated Review Group; Chemo/Dietary Prevention Study Section.

*Date:* June 23-24, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Warwick Seattle Hotel, 401 Lenora Street, Seattle, WA 98121.

*Contact Person:* Svetlana Kotliarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301-594-7945, [kotliars@mail.nih.gov](mailto:kotliars@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Drug Discovery and Mechanisms of Antimicrobial Resistance.

*Date:* June 23, 2016.

*Time:* 1:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* American Inn of Bethesda, 8130 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* John C Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, (301) 435-2398, [pughjohn@csr.nih.gov](mailto:pughjohn@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 26, 2016.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-12898 Filed 6-1-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development.

**FOR FURTHER INFORMATION CONTACT:** Licensing information may be obtained by emailing the indicated licensing contact at the National Heart, Lung, and Blood, Office of Technology Transfer and Development Office of Technology Transfer, 31 Center Drive Room 4A29, MSC2479, Bethesda, MD 20892-2479; telephone: 301-402-5579. A signed Confidential Disclosure Agreement may be required to receive any unpublished information.

**SUPPLEMENTARY INFORMATION:** Technology description follows.

#### Albumin Binding Immunomodulatory Compositions

The invention relates to molecules wherein Evan's Blue dye is chemically conjugated to CpG Oligonucleotides that elicit anti-tumoral or infection fighting immunity. Evans Blue, a symmetric azo dye, has high binding affinity to albumin. Albumin binding ability of Evans blue is utilized with CpGs and tumor-specific antigens, in order to leverage endogenous albumin that increases the safety and the potency of molecular vaccines. As such, the molecular entities provided here enable efficient delivery and prolonged retention in lymph nodes and reduce systemic toxicity of Evans Blue and enhanced the therapeutic potency of molecular vaccines.

*Potential Commercial Applications:*

- Cancer therapeutics
- Infectious disease therapeutics
- Lymph node specificity
- Higher stability/Lower toxicity

*Development Stage:*

- Early stage



*Inventors:* Xiaoyuan Chen and Guizhi Zhu (both of NIBIB).

*Intellectual Property:* HHS Reference No. E-149-2016/0; U.S. Provisional Patent Applications 62/331,890 filed May 4, 2016.

*Licensing Contact:* Michael Shmilovich, Esq, CLP; 301-435-5019; [shmilovm@mail.nih.gov](mailto:shmilovm@mail.nih.gov).

Dated: May 26, 2016.

**Michael Shmilovich,**

*Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute, Office of Technology Transfer and Development.*

[FR Doc. 2016-12892 Filed 6-1-16; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Submission for OMB Review; 30-Day Comment Request; The Study of Center of Global Health's (CGH) Workshops (NCI)

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute, the National Institutes of Health, has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 1, 2016 and page 10638 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute, NCI, National Institutes of Health, may not conduct or sponsor, and the

respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA\_submission@omb.eop.gov* or by fax to 202-395-6974, Attention: NIH Desk Officer.

**DATES:** *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the data collection plans and instruments, or request more information on the proposed project, contact\*: Sudha Sivaram, National Cancer Institute Center for Global Health, 9609 Medical Center Dr., Rm 3W528, Rockville, MD 20850 or call non-toll-free number (240) 276-5815 or Email your request, including your address to: [sudha.sivaram@nih.gov](mailto:sudha.sivaram@nih.gov). Formal requests for additional plans and instruments must be requested in writing.

*Proposed Collection:* The Study of the Center of Global Health's (CGH) Workshops (NCI), 0925-0722, Expiration Date 06/30/2018, REVISION, National Cancer Institute (NCI), National Institutes of Health (NIH).

*Need and Use of Information Collection:* This study is collecting stakeholder feedback from past and future workshops; to assess the effectiveness of the Center of Global Health (CGH) workshops, which seek to

assess abilities of the workshop attendees and respective countries to implement national cancer control programs; inform content and improve delivery of future workshops, and to systematically assess CGH's contribution. The workshops to be studied are the Symposia on Global Cancer Research, Workshops in Cancer Control Planning and Implementation, the Summer Curriculum in Cancer Prevention, Women's Cancer Program Summit, Regional Grant Writing and Peer Review Workshops, and Workshops on Tobacco Control. While these workshops differ in content and delivery style, their underlying goals are the same; they intend to initiate and enhance cancer control efforts, increase capacity for cancer research, foster new partnerships, and create research and cancer control networks. The proposed study requests information about the outcomes of each of these workshops including (1) new cancer research partnerships and networks (2) cancer control partnerships and networks, (3) effects on cancer research, and (4) effect on cancer control planning and implementation efforts. Information will be collected in two phases where Phase 1 will collect information from attendees of past workshops (1998-2015) and Phase 2 will collect information from attendees of future workshops over the next three years. The surveys will enable CGH to better understand the impact the workshops have had on their partnerships and networks, research, and cancer control planning and implementation efforts.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 941.

#### ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents per year	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Chief Executives, Medical Scientists, Health Educators, Family/General Practitioners, Registered Nurses, Medical and Health Services Managers.	Phase 1: Symposium on Global Cancer Research.	500	1	20/60	167
	Phase 2: Symposium on Global Cancer Research.	250	1	20/60	84
	Phase 1: Workshop in Cancer Control Planning and Implementation for non-Ministry of Health participants.	70	1	20/60	23
	Phase 2: Workshop in Cancer Control Planning and Implementation for non-Ministry of Health participants.	70	1	20/60	23
	Phase 1: Workshop in Cancer Control Planning and Implementation for Ministry of Health.	70	1	20/60	23

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents per year	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
	Phase 2: Workshop in Cancer Control Planning and Implementation for Ministry of Health.	70	1	20/60	23
	Phase 1: Summer Curriculum in Cancer Prevention (Attach 3D).	500	1	30/60	250
	Phase 2: Summer Curriculum in Cancer Prevention.	27	1	30/60	14
	Phase 1: Women's Cancer Program Summit.	140	1	20/60	47
	Phase 2: Women's Cancer Program Summit.	140	1	20/60	47
	Phase 1: Regional Grant Writing and Peer Review Workshop.	150	1	30/60	75
	Phase 2: Regional Grant Writing and Peer Review Workshop.	60	1	30/60	30
	Phase 1: Workshops on Tobacco Control.	180	1	30/60	90
	Phase 2: Workshops on Tobacco Control.	90	1	30/60	45
Totals .....	.....	2,317	2,317	.....	941

Dated: May 26, 2016.

**Karla Bailey,**

*Project Clearance Liaison, National Cancer Institute, NIH.*

[FR Doc. 2016-12995 Filed 6-1-16; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Center for Scientific Review; 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:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Sensory and Cognitive Processes.

*Date:* June 21-22, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Jana Drgonova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5213, Bethesda, MD 20892, *jdrgonova@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery and Development.

*Date:* June 27, 2016.

*Time:* 8:00 a.m. to 9:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

*Contact Person:* Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301-435-1180, *ruvinser@csr.nih.gov*.

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.

*Date:* June 28-29, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Michael Knecht, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435-1046, *knechtm@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA Panel: Molecular and Cellular Substrates of Complex Brain Disorders.

*Date:* June 28, 2016.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington Embassy Row, 2015 Massachusetts Avenue NW., Washington, DC 20036.

*Contact Person:* Deborah L. Lewis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301-408-9129, *lewisdeb@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Nephrology.

*Date:* June 28-29, 2016.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301-435-1198, *sahai@csr.nih.gov*.

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Nutrition and Metabolic Processes Study Section.

*Date:* June 28, 2016.

*Time:* 8:00 a.m. to 7:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin Georgetown, 2350 M Street NW., Washington, DC 20037.

*Contact Person:* Gregory S. Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892-7892, 301-755-4335, [greg.shelness@nih.gov](mailto:greg.shelness@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA Panel: Molecular Probes.

*Date:* June 28, 2016.

*Time:* 10:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Washington, 1515 Rhode Island Avenue NW., Washington, DC 20005.

*Contact Person:* Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435-1164, [custerm@csr.nih.gov](mailto:custerm@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Musculoskeletal Rehabilitation Sciences.

*Date:* June 28, 2016.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435-1222, [nurminskayam@csr.nih.gov](mailto:nurminskayam@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Musculoskeletal Rehabilitation Sciences.

*Date:* June 28, 2016.

*Time:* 11:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301-435-1212, [kumarra@csr.nih.gov](mailto:kumarra@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Hormonal Regulation of Bone Metabolism.

*Date:* June 28, 2016.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301-435-1212, [kumarra@csr.nih.gov](mailto:kumarra@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Psychosocial Development, Risk and Prevention.

*Date:* June 28, 2016.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Anna L. Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, (301) 435-2889, [rileyann@csr.nih.gov](mailto:rileyann@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Gastrointestinal Inflammation and Development.

*Date:* June 28, 2016.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Martha Garcia, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301-435-1243, [garciamc@nih.gov](mailto:garciamc@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 27, 2016.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-12997 Filed 6-1-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[USCG-2016-0142]

### Towing Safety Advisory Committee; June 2016 Teleconference

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of teleconference meeting.

**SUMMARY:** The Towing Safety Advisory Committee will meet, via teleconference, to receive two additional tasks: One on the implementation of 46 Code of Federal Regulations subchapter M and the other on training requirement for firefighting equipment for inland towing vessels. This meeting will be open to the public.

**DATES:** The full committee will meet by teleconference on Tuesday, June 22, 2016, from 1 p.m. until 3 p.m. Eastern Daylight Time. Please note that this meeting may close early if the Committee has completed its business. To join the teleconference, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to obtain

the needed information no later than 1 p.m. on June 15, 2016. The number of teleconference lines is limited and will be available on a first-come, first-served basis. Written comments for distribution to Committee members before the meeting must be submitted no later than June 15, 2016.

**ADDRESSES:** Written comments may be submitted to the docket for this notice, USCG-2016-0142, using the Federal eRulemaking Portal at <http://www.regulations.gov>. To facilitate public participation, we are inviting public comment on the issues to be considered by the Committee as listed in the "Agenda" section below. If you encounter technical difficulties, contact the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

*Instructions:* All submissions must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at <http://regulations.gov>, including any personal information provided. You may review a Privacy Act notice regarding the Federal Docket Management system in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

*Docket Search:* For access to the docket to read documents or comments related to this notice, go to <http://www.regulations.gov>, type USCG-2016-0142 in the Search box, press Enter, and then click on the item you wish to view. **FOR FURTHER INFORMATION CONTACT:** Mr. William J. Abernathy, Alternate Designated Federal Officer of the Towing Safety Advisory Committee, 2703 Martin Luther King Jr Ave. SE., Stop 7509, Washington, DC 20593-7509, telephone 202-372-1363, fax 202-372-8382 or [william.j.abernathy@uscg.mil](mailto:william.j.abernathy@uscg.mil).

**SUPPLEMENTARY INFORMATION:** Notice of this meeting via teleconference is in compliance with the Federal Advisory Committee Act, (Title 5 U.S.C. Appendix). As stated in 33 U.S.C. 1231a, the Towing Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters related to shallow-draft inland and coastal waterway navigation and towing safety.

### Agenda of Meeting

The agenda for the June 22, 2016, teleconference is as follows:

(1) Assignment of new tasking to the Committee for "Recommendations on the Implementation of 46 Code of Federal Regulations Subchapter M—Towing Vessels" (Short Title:

Subchapter M Implementation). Work on this task is to begin after the Inspection of Towing Vessels final rule publishes.

(2) Assignment of new tasking to the Committee for “Recommendation Regarding Firefighting Training Requirements for Officer Endorsements for Master or Mate (Pilot) of Towing Vessels, Except Utility Towing and Apprentice Mate (Steersman) of Towing Vessels, in Inland Service” (Short title: “Firefighting Training Requirements”).

During the June 22, 2016 meeting via teleconference, a public comment period will be held from approximately 2:45 p.m. to 3 p.m. Speakers are requested to limit their comments to three minutes. Please note that this public comment period may start before 2:45 p.m. if all other agenda items have been covered and may end before 3 p.m. if all of those wishing to comment have done so.

#### Minutes

Minutes from the meeting will be available for public review and copying within 30 days following the meeting at <https://homeport.uscg.mil/tsac>.

#### Notice of Future 2016 Towing Safety Advisory Committee Meetings

To receive automatic email notices of any future Towing Safety Advisory Committee meetings in 2016, go to the online docket, USCG-2016-0142 (<http://www.regulations.gov/1B/docketDetail;D=USCG-2016-0142>), and select the sign-up-for-email-alerts option. We plan to use the same docket number for all Towing Safety Advisory Committee meeting notices in 2016, so if another 2016 meeting notice is published you will receive an email alert from [www.regulations.gov](http://www.regulations.gov) when the notice appears in this docket.

Dated: May 26, 2016.

**J.G. Lantz,**

*Director of Commercial Regulations and Standards, U.S. Coast Guard.*

[FR Doc. 2016-12963 Filed 6-1-16; 8:45 am]

**BILLING CODE 9110-04-P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NRNL-21118;  
PPWOCRADIO, PCU00RP14.R50000]

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting comments on the significance of properties nominated before May 14, 2016, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted by June 17, 2016.

**ADDRESSES:** Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202-371-6447.

#### SUPPLEMENTARY INFORMATION:

The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before May 14, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## ALABAMA

### Colbert County

Florence, Alabama Music Enterprises (FAME) Recording Studios, 603 Avalon Ave., Muscle Shoals, 16000397

### Conecuh County

Evergreen School, 100 City School Dr., Evergreen, 16000398

### Jefferson County

North Lakeview Industrial District, 2801-3211 2nd & 2810-3130 3rd Aves. S., 216-31 29th, 130 30th, 230 31st & 205 32nd Sts., S., Birmingham, 16000399

### Mobile County

Automobile Alley Historic District, 156-157 N. Cedar, 108 N. Dearborn, 100-101 N. Franklin, 156 N. Hamilton, 163 N. Lawrence, 453-701 St. Anthony Sts., Mobile, 16000400

## ALASKA

### Juneau Borough-Census Area

X'unaxi, Address Restricted, Juneau, 16000401

## ARKANSAS

### Carroll County

Berryville Commercial Historic District, Public Square, Berryville, 16000402

## KANSAS

### Atchison County

Martin, John A., Grade School, (Public Schools of Kansas MPS) 507 Division, Atchison, 16000403

### Brown County

Iowa Tribe Community Building, (New Deal-Era Resources of Kansas MPS) 330th Rd., White Cloud, 16000404

### Neosho County

Oak Grove School, District 20, (Public Schools of Kansas MPS) 20505 20th Rd., St. Paul, 16000405

### Scott County

Steele, Herbert and Eliza, House, W. Scott Lake Dr., Scott City, 16000406

### Sedgwick County

Colorado—Derby Building, 201 N. Water St., Wichita, 16000407

## MARYLAND

### Caroline County

Chambers Park Log Cabin, Liberty Rd., Federalsburg, 16000408

## MASSACHUSETTS

### Suffolk County

Francis Street—Fenwood Road Historic District, Roughly bounded by Huntington Ave., Francis, Vining & Fenwood Sts., St. Albans Rd., Boston, 16000409

## MICHIGAN

### Kalamazoo County

Fountain of the Pioneers, (Kalamazoo MRA) Bronson Park, bounded by Academy, Rose, South & Park Sts., Kalamazoo, 16000417

## MONTANA

### Blaine County

Ervin Homestead—Gist Bottom Historic District, River Mile 122.3 Left, Hays, 16000410

## NEW YORK

### Columbia County

Columbia Turnpike East Tollhouse, NY 23, Hillsdale, 16000411

### Rensselaer County

Methodist Episcopal Church of Lansingburgh, 600 3rd Ave., Lansingburgh, 16000412

## OREGON

### Josephine County

Grey, Zane, Cabin, N. bank of Rogue R., Galice, 16000413

## SOUTH CAROLINA

### Berkeley County

Gippy Plantation, 366 Avenue of Oaks, Moncks Corner, 16000414

**SOUTH DAKOTA****Clay County**

Bluff Historic District, Oak Pl., Court, Kidder, Church & Bloomingdale Sts., Vermillion, 16000415

**TENNESSEE****Davidson County**

Fire Hall for Engine Company No. 18, 1220 Gallatin Ave., Nashville, 16000416

**UTAH****Salt Lake County**

Bourne, Ernie and Irmgard, House, (Mount Olympus—Millcreek Community MPS) 3460 E. Ranch View Dr., Millcreek Township, 16000418

Butler, Donald and Erma, House, (Mount Olympus—Millcreek Community MPS) 3450 E. Ranch View Dr., Millcreek Township, 16000419

Fish—Baughman House, (Mount Olympus—Millcreek Community MPS) 3436 E. Ranch View Dr., Millcreek Township, 16000420

**WISCONSIN****Sheboygan County**

Downtown Plymouth Historic District, Generally bounded by the 100, 200, 300 & 400 blks. of E. Mill St., Plymouth, 16000421

**Authority:** 60.13 of 36 CFR part 60

Dated: May 18, 2016.

**J. Paul Loether,**

*Chief, National Register of Historic Places/  
National Historic Landmarks Program.*

[FR Doc. 2016-12982 Filed 6-1-16; 8:45 am]

**BILLING CODE 4312-51-P**

**DEPARTMENT OF THE INTERIOR****National Park Service**

[NPS-WASO-NRNL-21141;  
PPWOCRADIO, PCU00RP14.R50000]

**National Register of Historic Places;  
Notification of Pending Nominations  
and Related Actions**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting comments on the significance of properties nominated before May 21, 2016, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted by June 17, 2016.

**ADDRESSES:** Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202-371-6447.

**SUPPLEMENTARY INFORMATION:**

The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before May 21, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**CALIFORNIA****Santa Clara County**

Willow Glen Trestle over Los Gatos Creek, On former Western Pacific RR. approx. 1/4 mi. N. of jct. of Coe Ave. & Leona Ct., San Jose, 16000422

**FLORIDA****Orange County**

Laughlin, James, House, 5538 Sydonie Dr., Mount Dora, 16000423

**MASSACHUSETTS****Hampden County**

Chapin School, 40 Meadow St., Chicopee, 16000424

**OREGON****Clackamas County**

Willamette National Cemetery, 11800 SE. Mt. Scott Blvd., Portland, 16000426

**PENNSYLVANIA****Philadelphia County**

Delaware Station of the Philadelphia Electric Company, The, 1325 Beach St., Philadelphia, 16000427  
Times Finishing Works, 1136-1148 N. American St., Philadelphia, 16000428

**WISCONSIN****Dane County**

Willow Drive Mounds and Habitation Site Complex, (Late Woodland Stage in Archeological Region 8 MPS) N. end of Willow Dr., Madison, 16000430

**Marathon County**

Dells of the Eau Claire County Park, P2150 Cty. Rd. Y, Plover, 16000429

A request for removal was received for the following resource:

**TENNESSEE****Marion County**

Marion Memorial Bridge, US 41 at Nickajack Lake, Haletown, 07000930

**Authority:** 60.13 of 36 CFR part 60.

Dated: May 23, 2016.

**J. Paul Loether,**

*Chief, National Register of Historic Places/  
National Historic Landmarks Program.*

[FR Doc. 2016-12984 Filed 6-1-16; 8:45 am]

**BILLING CODE 4312-51-P**

**INTERNATIONAL TRADE  
COMMISSION**

[Investigation No. 337-TA-959]

**Certain Electric Skin Care Devices,  
Brushes and Chargers Therefor, and  
Kits Containing the Same;  
Commission Determination To Review  
in Part an Initial Determination  
Granting Complainant's Motion for  
Summary Determination of Violation of  
Section 337; Request for Written  
Submissions on Remedy, the Public  
Interest, and Bonding**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination ("ID") (Order No. 42) of the presiding administrative law judge ("ALJ") granting complainant's motion for summary determination of violation of section 337.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), on June 25, 2015, based on a complaint filed by Pacific Bioscience Laboratories, Inc. of Redmond, Washington (“PBL”). 80 FR 36576–77 (Jun. 25, 2015). The amended complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electric skin care devices, brushes and chargers therefor, and kits containing the same by reason of infringement of certain claims of U.S. Patent Nos. 7,320,691 and 7,386,906, and U.S. Design Patent No. D523,809. The complaint further alleges violations of section 337 by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.* The complaint named numerous respondents. The Commission’s Office of Unfair Import Investigations was named as a party.

During the course of the investigation, eight of the respondents were terminated by consent order: Nutra-Luxe M.D., LLC of Fort Myers, Florida (Order No. 10) (consent order issued Jan. 5, 2016); SkincarebyAlana of Dana Point, California (Order No. 11) (consent order issued Oct. 6, 2015); Unicos USA, Inc. of LaHabra, California (Order No. 15) (consent order issued Oct. 20, 2015); H2PRO Beautylife, Inc. of Placentia, California (Order No. 19) (consent order issued Oct. 22, 2015); Jewlzle of New York, New York (Order No. 20) (consent order issued Oct. 22, 2015); Home Skinovations Inc. of Richmond Hill, Ontario, Canada, and Home Skinovations Ltd. of Yokneam, Israel (Order No. 30) (consent order issued Dec. 23, 2015); and Accord Media, LLC of New York, New York (Order No. 31) (consent order issued Dec. 23, 2015). Respondent RN Ventures Ltd. of London, United Kingdom, was terminated based on a settlement agreement (Order No. 36) (*not reviewed* Feb. 4, 2016). Respondents Michael Todd LP and MTTO LLC, both of Port St. Lucie, Florida, were also terminated based on a settlement agreement (Order No. 37) (*not reviewed* Mar. 3, 2016).

The remaining ten respondents were found in default: Coreana Cosmetics Co., Ltd. of Chungcheongnam-do, Republic of Korea; Flageoli Classic Limited of Las Vegas, Nevada; Serious Skin Care, Inc. of Carson City, Nevada; Shanghai Anzikang Electric Co., Ltd. of Shanghai, China; and Wenzhou Ai Er Electrical Technology Co., Ltd. of

Zhejiang, China (Order No. 13) (*not reviewed*, as modified by Order No. 15, Oct. 20, 2015); ANEX Corporation of Seoul, Republic of Korea; Korean Beauty Co., Ltd. of Seoul, Republic of Korea; and Our Family Jewels, Inc. of Parker, Colorado (Order No. 18) (*not reviewed* Oct. 22, 2015); Beauty Tech, Inc. of Coral Gables, Florida (Order No. 24) (*not reviewed* Nov. 13, 2015); and Xnovi Electronic Co., Ltd. of Shenzhen, China (Order No. 32) (*not reviewed* Dec. 23, 2015) (collectively, “the defaulting Respondents”).

On February 18, 2016, complainant PBL filed a motion for summary determination of violation of Section 337 by the defaulting Respondents. The Commission investigative attorney (“IA”) filed a response in support of the motion. No other responses were filed.

On April 11, 2016, the ALJ issued an ID (Order No. 42) granting complainant’s motion and making recommendations regarding remedy and bonding. The IA filed a timely petition for review-in-part of the ID. No other party petitioned for review of the ID. Complainant PBL filed a response in support of the IA’s petition. No other responses were filed.

The Commission has determined to review the ID in part. Specifically, the Commission has determined to review the ID’s findings on the economic prong of the domestic industry requirement as to the patent-based allegations, all issues related to violation of the asserted trade dress, and to correct certain minor typographical errors. The Commission does not request any submissions on the issues under review.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission’s action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

*Written Submissions:* Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission’s consideration. Complainant is further requested to provide the expiration dates of each of the asserted patents, and state the HTSUS subheadings under which the accused articles are imported. Complainant is also requested to supply the names of known importers of the infringing articles. The written submissions and proposed remedial orders must be filed no later than the close of business on June 9, 2016. Reply submissions must be filed no later than the close of business on June 16, 2016. Such submissions should address the ALJ’s recommended determinations on remedy and bonding which were made in Order No. 42. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission’s Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to

the investigation number (“Inv. No. 337–TA–959”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf)). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 26, 2016.

**Lisa R. Barton,**

Secretary to the Commission.

[FR Doc. 2016–12923 Filed 6–1–16; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–946]

### Certain Ink Cartridges and Components Thereof; Issuance of a General Exclusion Order and Cease and Desist Orders; Termination of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to issue: (1) A general exclusion order (“GEO”) barring entry of certain ink cartridges and components thereof that infringe the patents asserted in this investigation; and (2) cease and desist orders (“CDOs”) directed against two domestic defaulting respondents. The

Commission has terminated this investigation.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), on January 27, 2015, based on a complaint filed by Epson Portland Inc., Epson America, Inc. and Seiko Epson Corporation (collectively, “Epson,” or Complainants). 80 FR 4314–16 (Jan. 27, 2015). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent No. 8,366,233 (“the ‘233 patent”); U.S. Patent No. 8,454,116 (“the ‘116 patent”); U.S. Patent No. 8,794,749 (“the ‘749 patent”); U.S. Patent No. 8,801,163 (“the ‘163 patent”); and U.S. Patent No. 8,882,513 (“the ‘513 patent”) (collectively, the “Asserted Patents”) by numerous respondents. *Id.* In particular, the notice of investigation named the following nineteen entities as respondents: Zhuhai Nano Digital Technology Co., Ltd. of Zhuhai, China; Nano Business & Technology, Inc. of Lake Oswego, Oregon; Zhuhai National Resources & Jingjie Imaging Products Co., Ltd. of Zhuhai, China; Huebon Co. Ltd. of Hong Kong; Chancen Co., Ltd. of Hong Kong; Zhuhai Rich Imaging Technology Co., Ltd. of Zhuhai, China; Shanghai Orink Infotech International Co., Ltd. of Shanghai, China; Orink Infotech International Co., Ltd. of Hong Kong; Zinyaw LLC of Houston, Texas; Yotat Group Co., Ltd. of Hong Kong; Yotat (Zhuhai) Technology Co., Ltd. of Zhuhai, China; Ourway Image Co., Ltd. of Zhuhai, China; Kingway Image Co., Ltd. of Zhuhai, China; Zhuhai Chinamate Technology Co., Ltd. of

Zhuhai, China; InkPro2day, LLC of Los Angeles, California; Dongguan OcBestjet Printer Consumables Co., Ltd. of Dongguan, China; OcBestjet Printer Consumables (HK) Co., Ltd. of Hong Kong; Aomya Printer Consumables (Zhuhai) Co., Ltd. of Guangdong, China; and Zhuhai Richeng Development Co., Ltd. of Zhuhai, China. The Commission’s Office of Unfair Import Investigations (“OUII”) was also named as a party.

On June 18, 2015, the ALJ issued an initial determination (“ID”) (Order No. 9) finding in default respondents Huebon Co.; Ltd., Chancen Co., Ltd.; Yotat Group Co., Ltd.; Ourway Image Co., Ltd.; Shanghai Orink Infotech International Co., Ltd.; Orink Infotech International Co., Ltd.; Kingway Image Co., Ltd.; Zhuhai Chinamate Technology Co., Ltd.; Yotat (Zhuhai) Technology Co., Ltd.; Zhuhai Richeng Development Co., Ltd.; Dongguan OcBestjet Printer Consumables Co., Ltd.; OcBestjet Printer Consumables (HK) Co., Ltd.; Zinyaw LLC; InkPro2day; LLC, Aomya Printer Consumables (Zhuhai) Co., Ltd.; Zhuhai National Resources & Jingjie Imaging Products Co., Ltd.; and Zhuhai Rich Imaging Technology Co., Ltd. (collectively, “the Defaulting Respondents”) (*not reviewed* Jul. 10, 2015). On July 8, 2015, the ALJ issued an ID (Order No. 10) terminating the investigation as to remaining named respondents Zhuhai Nano Digital Technology, Co., Ltd. (China) and Nano Business and Technology, Inc. (USA) based on a settlement agreement and consent order (*not reviewed* Aug. 5, 2015).

All of the respondents in this investigation have either defaulted or entered into consent orders that have been approved by the Commission. On September 16, 2015, the ALJ issued an ID (Order No. 11) partially terminating the investigation based on Epson’s withdrawal of certain claims (*not reviewed* Oct. 15, 2015). Claims 1 and 10 of the ‘233 patent; claims 9, 14, 18, and 21 of the ‘116 patent; claims 1, 18, 49, and 60 of the ‘749 patent; claims 1 and 6 of the ‘163 patent; and claims 14, 15, and 19 of the ‘513 patent remain pending in this investigation. ID at 3.

On August 31, 2015, Epson filed a motion for summary determination of violation by the Defaulting Respondents. The IA filed a response in support of the motion on September 11, 2015. No respondent filed a response to the motion.

On October 28, 2015, the ALJ issued an ID (order No. 12) granting Complainants’ motion for summary determination. No party petitioned for review of the ID. The Commission



determined to review-in-part the subject ID and, on review, to affirm the ID with certain modifications to the ALJ's findings regarding the importation requirement. Notice of Commission Determination To Review an ID in Part and, on Review, to Affirm a Finding of a Violation of Section 337 dated December 14, 2015 ("Commission Notice") at 2. See 80 Fed. Reg. 79097-99 (Dec. 18, 2015). The Commission's determination resulted in a finding of a violation of section 337.

The Commission requested written submissions on remedy, public interest, and bonding. *Id.* Complainants and OUII timely filed their submissions pursuant to the Commission Notice. No other parties filed submissions in response to the Commission Notice. No submissions were filed by the public.

Having reviewed the submissions filed in response to the Commission's Notice and the evidentiary record, the Commission has determined that the appropriate form of relief in this investigation is: (a) A GEO prohibiting the unlicensed importation of certain ink cartridges and components thereof covered by one or more of claims 1 and 10 of the '233 patent; claims 9, 14, 18, and 21 of the '116 patent; claims 1, 18, 49, and 60 of the '749 patent; claims 1 and 6 of the '163 patent; and claims 14, 15, and 19 of the '513 patent; and (b) CDOs directed against respondents Zinyaw and InkPro2day.

The Commission has further determined that the public interest factors enumerated in subsections (d)(1) and (f)(1) (19 U.S.C. 1337(d)(1), (f)(1)) do not preclude issuance of the above-referenced remedial orders. Additionally, the Commission has determined that a bond in the amount of one hundred (100) percent of the entered value is required to permit temporary importation of the articles in question during the period of Presidential review (19 U.S.C. 1337(j)). The Commission has also issued an opinion explaining the basis for the remedy. The investigation is terminated.

The Commission's orders and the record upon which it based its determination were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury of the orders.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 26, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016-12922 Filed 6-1-16; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Amended Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received an amended complaint entitled *Certain Carbon Spine Board, Cervical Collar and Various Medical Training Manikin Devices, and Accompanying Product Catalogues, Product Inserts, Literature and Components Thereof DN 3128*; the Commission is soliciting comments on any public interest issues raised by the amended complaint or complainants' filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. The public version of the amended complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,<sup>1</sup> and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.<sup>2</sup> The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.<sup>3</sup> Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

<sup>1</sup> Electronic Document Information System (EDIS): <http://edis.usitc.gov>.

<sup>2</sup> United States International Trade Commission (USITC): <http://edis.usitc.gov>.

<sup>3</sup> Electronic Document Information System (EDIS): <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:** The Commission has received an amended complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Laerdal Medical Corp. and Laerdal Medical AS on March 21, 2016. The amended complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain carbon spine board, cervical collar and various medical training manikin devices, and accompanying product catalogues, product inserts, literature and components thereof. The amended complaint names as respondents Shanghai Evenk International Trading Co., Ltd. of China; Shanghai Honglian Medical Instrument Development Co., Ltd. of China; Shanghai Jolly Medical Education Co., Ltd. of China; Zhangjiagang Xiehe Medical Apparatus & Instruments Co., Ltd. of China; Zhangjiagang New Fellow Med. Co., Ltd. of China; Jiangsu Yongxin Medical Equipment Co., Ltd. of China; Jiangsu Yongxin Medical-Use Facilities Making Co., Ltd. of China; Jiangyin Everise Medical Devices Co., Ltd. of China; Medsource International Co., Ltd. and Medsource Factory, Inc. of China; and Basic Medical Supply, LLC of Richmond, TX. The complainants request that the Commission issue a general exclusion order, or in the alternative issue a limited exclusion order, and issue cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the amended complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainants in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainants,

their licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainants, complainants' licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3128") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures<sup>4</sup>). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.<sup>5</sup>

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: May 26, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016–12879 Filed 6–1–16; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1002]

### Certain Carbon and Alloy Steel Products; Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 26, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of United States Steel Corporation of Pittsburgh, Pennsylvania. A supplement to the complaint was filed on May 16, 2016. The complaint alleges violations of section 337 based upon the importation into the United States, or in the sale of certain carbon and alloy steel products by reason of: (1) A conspiracy to fix prices and control output and export volumes, the threat or effect of which is to restrain or monopolize trade and commerce in the United States; (2) misappropriation and use of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States; and (3) false designation of origin or manufacturer, the threat or effect of which is to destroy or substantially injure an industry in the United States.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a general exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning

the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:** The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on May 26, 2016, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, or in the sale of certain carbon and alloy steel products by reason of: (1) A conspiracy to fix prices and control output and export volumes, the threat or effect of which is to restrain or monopolize trade and commerce in the United States; (2) misappropriation and use of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States; or (3) false designation of origin or manufacturer, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: United States Steel Corporation, 600 Grant Street, Pittsburgh, PA 15219–2800.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Hebei Iron and Steel Group Co., Ltd., 385 Sports South Avenue,

<sup>4</sup> Handbook for Electronic Filing Procedures: [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).

<sup>5</sup> Electronic Document Information System (EDIS): <http://edis.usitc.gov>.

- Shijiazhuang City, 050023 Hebei Province, China
- Hebei Iron & Steel Group Hengshui Strip Rolling Co., Ltd., No. 29 Yuhua West Road, Tangcheng District, Hengshui City, 053000 Hebei Province, China
- Hebei Iron & Steel (Hong Kong) International Trade Co., Ltd., Suite 2705, 27th Floor, No. 9 Queen's Road Central, Hong Kong, China
- Shanghai Baosteel Group Corporation, Baoshan Iron & Steel Building, 370 Pudian, Pudong New Area, 200122 Shanghai, China
- Baoshan Iron & Steel Co., Ltd., Baosteel Administrative Center, No. 885 Fujin Road, Baoshan District, 201900 Shanghai, China
- Baosteel America Inc., 85 Chestnut Ridge Road, Montvale, NJ 07645
- Jiangsu Shagang Group, Yongxin Road, Zhangjiagang, 215625 Jiangsu Province, China
- Jiangsu Shagang International Trade Co., Ltd., 4,5/F, Shagang Building, Jinfeng Town, Zhangjiagang, 215625 Jiangsu Province, China
- Anshan Iron and Steel Group, 77 Dong Shan Street, Tie Dong District, Anshan City, 114009 Liaoning Province, China
- Angang Group International Trade Corporation, No. 322 South Zhonghua Road, Tiedong District, 114002 Anshan, Liaoning Province, China
- Angang Group Hong Kong Co. Ltd., Room 3412-13, 34/F Convention Plaza Office Tower, 1 Harbour Road, Wanchai, Hong Kong, China
- Wuhan Iron and Steel Group Corp., Changqian, Qingshan District, 430083 Hubei Province, China
- Wuhan Iron and Steel Co., Ltd., 3 Yangang Road, Qingshan District, Wuhan City, 430083 Hubei Province, China
- WISCO America Co., Ltd., 2006 Birch Street, Suite 300, Newport Beach, CA 92660
- Shougang Group, 68 Shijingshan Road, Shijingshan District, 100041 Beijing, China
- China Shougang International Trade & Engineering Corporation, 60 North Street, Xizhimen, Haidian District, Beijing, China
- Shandong Iron and Steel Group Co. Ltd., 4 Shuntai Square, No. 2000 Shunhua Road, Jinan City, 250101 Shandong Province, China
- Shandong Iron and Steel Co., Ltd., 21 Gongye North Road, Licheng District, Jinan City, 250101 Shandong Province, China
- Jigang Hong Kong Holdings Co., Ltd., Room 4206, 42/F, Convention Plaza, 1 Harbour Road, Wan Chai, Hong Kong, China
- Jinan Steel International Trade Co., Ltd., 21 Gongye North Road, Licheng District, Jinan City, 250101 Shandong Province, China
- Magang Group Holding Co. Ltd., 8 Jiuhuaxi Road, Maanshan City, 243003 Anhui Province, China
- Maanshan Iron and Steel Co. Ltd., 8 Jiuhuaxi Road, Maanshan City, 243003 Anhui Province, China
- Bohai Iron and Steel Group, No. 74 MaChang Road, Heping District, 300050 Tianjin, China
- Tianjin Pipe (Group) Corporation, 396 Jintang Highway, Dongli District, 300301 Tianjin Province, China
- Tianjin Pipe International Economic & Trading Corporation, 396 Jintang Highway, Dongli District, 300301 Tianjin Province, China
- TPCO Enterprise, Inc., 10700 Richmond Avenue, Suite # 302, Houston, Texas 77042
- TPCO America Corporation, 5431 Highway 35, Gregory, Texas 78359
- Benxi Steel (Group) Co. Ltd., 16 Renmin Road, Pingshan District, Benxi City, 117000 Liaoning Province, China
- Benxi Iron and Steel (Group) International Economic and Trading Co. Ltd., 8/F, 9 Dongming Avenue, Pingshan District, Benxi City, 117000 Liaoning Province, China
- Hunan Valin Steel Co. Ltd., No. 222 House Road, Changsha City, 410004 Hunan Province, China
- Hunan Valin Xiangtan Iron and Steel Co. Ltd., Yuetang Road, Yuetang District, Xiangtan City, 411101 Hunan Province, China
- Tianjin Tiangang Guanye Co., Ltd., 1-13 Zhufangyuan, Duwang New City, Beichen District, 300400 Tianjin, China
- Wuxi Sunny Xin Rui Science and Technology Co., Ltd., 21 Shixin Road, Dongbeitang, Xishan District, 214000 Wuxi Province, China
- Taian JNC Industrial Co., Ltd., 666 Nantianmen Street, Hi-Tech Industry Development Zone, Tai'an City, 271000 Shandong Province, China
- EQ Metal (Shanghai) Co., Ltd., Rm. 803, 86 Sibao Road, Sijing Town, Songjiang District, Shanghai, China
- Kunshan Xinbei International Trade Co., Ltd., No. 351, Lvzhou Shanyu, Yushan Town, Suzhou, Jiangsu, China
- Tianjin Xinhai Trade Co., Ltd., Floor 11, Tonggang Liye Building, Junliangcheng, Dongli District, 300450 Tianjin, China
- Tianjin Xinlianxin Steel Pipe Co., Ltd., 8 Juhai Road, Jinghai Development Area, 301600 Tianjin, China
- Tianjin Xinyue Industrial and Trade Co., Ltd., Daquizhuang Industrial Area, 301606 Tianjin, China
- Xian Linkun Materials (Steel Pipe Supplies) Co., Ltd., Compound A8, E-Pang Road, Lianhu District, Xi'an City, 710005 Shaanxi Province, China
- (c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and
- (4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.
- Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.
- Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.
- By order of the Commission.  
Issued: May 26, 2016  
**Lisa R. Barton,**  
*Secretary to the Commission.*
- [FR Doc. 2016-12935 Filed 6-1-16; 8:45 am]  
**BILLING CODE 7020-02-P**
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- NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**
- [Notice: (16-038)]
- NASA Advisory Council; Science Committee; Ad Hoc Task Force on Big Data; Meeting**
- AGENCY:** National Aeronautics and Space Administration.
- ACTION:** Notice of meeting.
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- SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National

Aeronautics and Space Administration (NASA) announces a meeting of the Ad Hoc Task Force on Big Data. This task force reports to the NASA Advisory Council's Science Committee. The meeting will be held for the purpose of soliciting and discussing, from the scientific community and other persons, scientific and technical information relevant to big data.

**DATES:** Tuesday, June 28, 2016, 9:00 a.m.–5:00 p.m., Wednesday, June 29, 2016, 9:00 a.m.–5:00 p.m., and Thursday, June 30, 2016, 9:00 a.m. to 12:00 noon, Local Time.

**ADDRESSES:** NASA Goddard Space Flight Center, Building 28, Room E210, 8800 Greenbelt Road, Greenbelt, MD 20771.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-0750, fax (202) 358-2779, or [ann.b.delo@nasa.gov](mailto:ann.b.delo@nasa.gov).

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The meeting will also be available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may call the USA toll free conference call number 800-988-9663, passcode 4718658, to participate in this meeting by telephone. A toll number also is available, 1-517-308-9427 passcode 4718658. The WebEx link is <https://nasa.webex.com/>; the meeting number is 997 975 025 and the password is *BigD@T@16-2*. The agenda for the meeting includes the following topics:

- NASA's Science Data Cyber-Infrastructure
- Access to NASA Science Mission Data Repositories
- Big Data Best Practices in Government, Academia and Industry
- Federal Big Data Initiatives
- Resources and Concerns Specific to Big Data at NASA Goddard Space Flight Center

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to the Goddard Space Flight Center. Due to the Real ID Act, any attendees with drivers licenses issued from non-compliant states must present a second form of ID. [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish

employment authorization) from the "List of the Acceptable Documents" on Form I-9]. Non-compliant states are: American Samoa, Arizona, Louisiana, Maine, Minnesota, New York, Oklahoma and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card holders) can provide full name and citizenship status 3 working days in advance by contacting by contacting Ms. Briana E. Horton, via email at [briana.e.horton@nasa.gov](mailto:briana.e.horton@nasa.gov) or by fax at (301) 286-1714. It is imperative that the meeting be held on these dates to the scheduling priorities of the key participants.

**Patricia D. Rausch,**

*Advisory Committee Management Officer,  
National Aeronautics and Space Administration.*

[FR Doc. 2016-13033 Filed 6-1-16; 8:45 am]

**BILLING CODE 7510-13-P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50-409 and 72-046; NRC-2015-0279]**

### In the Matter of LaCrosse Solutions, LLC; Dairyland Power Cooperative, La Crosse Boiling Water Reactor

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct transfer of license; order.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an order approving the direct transfer of Possession Only License No. DPR-45 for the La Crosse Boiling Water Reactor (LACBWR) from the current holder, Dairyland Power Cooperative (DPC), to LaCrosseSolutions, LLC (LS) a wholly-owned subsidiary of EnergySolutions, LLC (ES). The NRC is also amending the facility operating license for administrative purposes to reflect the license transfer from DPC to LS. The NRC confirmed that LS met the regulatory, legal, technical, and financial obligations necessary to qualify them as a transferee, and

determined that the transferee is qualified to be the holder of the license; and the transfer of the license is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission. The order approving the transfer of the LACBWR license to ES became effective on May 20, 2016.

**DATES:** The Order was issued on May 20, 2016, and is effective for one year.

**ADDRESSES:** Please refer to Docket ID NRC-2015-0279 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0279. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; or via email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at: <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at: 1-800-397-4209, 301-415-4737, or via email to: [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The license transfer Order, the NRC safety evaluation supporting the staff's findings, and the conforming license amendment are available in ADAMS under Accession Nos. ML16123A073, ML16123A074, and ML16123A057, respectively.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Marlayna G. Vaaler, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3178, email: [Marlayna.Vaaler@nrc.gov](mailto:Marlayna.Vaaler@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The text of the Order is attached.

Dated at Rockville, Maryland, this 26th day of May 2016.

For the U.S. Nuclear Regulatory Commission.

**Andrea L. Kock,**

*Deputy Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

**Attachment—Order Approving the Transfer of License and Conforming Amendment**

*United States of America*

NUCLEAR REGULATORY COMMISSION

In the Matter of Dairyland Power Cooperative; La Crosse Boiling Water Reactor Docket Nos. 50–409 and 72–046 License No. DPR–45 Order Approving the Transfer of License and Conforming Amendment

**I**

Dairyland Power Cooperative (DPC) is the holder of Possession Only License No. DPR–45, which authorizes the possession and maintenance of the La Crosse Boiling Water Reactor (LACBWR). LACBWR permanently ceased operations on April 30, 1987, and reactor defueling was completed on June 11, 1987. In a letter dated August 4, 1987, the U.S. Nuclear Regulatory Commission (NRC) terminated DPC's authority to operate LACBWR under Provisional Operating License No. DPR–45, and a possess but not operate status was granted. By letter dated August 18, 1988, the NRC amended DPC's Provisional Operating License No. DPR–45 to Possession Only License No. DPR–45 to reflect the permanently defueled configuration at LACBWR. The NRC issued an Order to authorize decommissioning of LACBWR and approve the proposed Decommissioning Plan on August 7, 1991. Therefore, pursuant to the provisions of Section 50.82(a)(1)(iii) and Section 50.82(a)(2) of Title 10 of the *Code of Federal Regulations* (10 CFR), operations at LACBWR are no longer authorized under the 10 CFR part 50 license, and DPC is licensed to possess, but not use or operate, LACBWR under Possession Only License No. DPR–45, subject to the conditions specified therein. The facility is located on the east bank of the Mississippi River in Vernon County, Wisconsin.

**II**

By letter dated October 8, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15307A310), as supplemented by letter dated December 15, 2015 (ADAMS Accession No. ML16004A147), DPC submitted an

application, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and 10 CFR 50.80, “Transfer of Licenses,” requesting NRC approval for the direct transfer of DPC's Possession Only License No. DPR–45 for LACBWR to LaCrosseSolutions, LLC (LS).

DPC intends to transfer its licensed possession, maintenance, and decommissioning authorities to LS in order to implement expedited decommissioning at LACBWR. DPC will remain the licensed owner of LACBWR and hold title to and ownership of the real estate and lease hold interests, title to and ownership of the spent nuclear fuel, and title to and ownership of all improvements at the LACBWR site. LS will lease the above-ground LACBWR structures (other than the LACBWR independent spent fuel storage installation (ISFSI)) and will assume responsibility for all licensed activities at LACBWR, including responsibilities for decommissioning. LS will assume responsibility for the maintenance and security of the ISFSI site, while DPC will provide for operation, maintenance, and security of the ISFSI site under a Company Services Agreement with LS. DPC will retain financial responsibility for operation, maintenance, and security of the ISFSI and other related costs. LS was expressly created for the purpose of decommissioning LACBWR and releasing the site for unrestricted use, except for the ISFSI. After the transfer, LS will complete the decommissioning of the LACBWR facility.

Upon issuance of a license amendment providing for termination of the facility operating license, except for the ISFSI site, and upon receipt of a future NRC license transfer approval, LS will transfer responsibility for the LACBWR license back to DPC. Thereafter, DPC will maintain the ISFSI, and the ultimate disposition of the spent nuclear fuel will be provided for under the terms of DPC's Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Waste with the U.S. Department of Energy. DPC will also continue to maintain its nuclear decommissioning trust, a grantor trust in which funds are segregated from its assets and outside its administrative control, in accordance with the requirements of 10 CFR 50.75(e)(1).

The application also requested approval of a conforming amendment to the license pursuant to 10 CFR 50.80 and 10 CFR 50.90. No physical or operational changes to the facility were requested beyond those encompassed in the LACBWR Post Shutdown Decommissioning Activities Report.

Notice of the application was published in the **Federal Register** (FR) on March 18, 2016 (81 FR 14898). The December 15, 2015, letter contained clarifying information, did not expand the application beyond the scope of the original notice, and did not affect the applicability of the NRC's generic no significant hazards consideration determination. No requests for hearing or comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that LS is qualified to be the holder of the license, and that the transfer of the license to LS, as described in the application, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the condition set forth below.

Upon review of the application for a conforming amendment to the LACBWR license to reflect the transfer to LS, the NRC staff determined the following:

(1) The application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I.

(2) There is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public, and that such activities will be conducted in compliance with the Commission's regulations.

(3) The issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public.

(4) The issuance of the proposed license amendment is in accordance with 10 CFR part 51 of the Commission's regulations, and all applicable requirements have been satisfied.

The findings set forth above are supported by an NRC safety evaluation dated May 20, 2016, which is available at ADAMS Accession No. ML16123A074.

## III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Act, 42 U.S.C. Sections 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the transfer of the license, as described herein, to LS is approved, subject to the following condition:

Prior to the closing of the license transfer from DPC to LS, LS shall provide the Directors of NRC's Office of Nuclear Material Safety and Safeguards (NMSS) and Office of Nuclear Reactor Regulation (NRR) satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of a licensee under 10 CFR 140.12 and 10 CFR 50.54(w) of the Commission's regulations, consistent with the exemptions issued to LACBWR on June 26, 1986.

*It is further ordered* that, consistent with 10 CFR 2.1315(b), the license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject direct license transfer is approved. The amendment shall be issued and made effective at the time the proposed direct license transfer is completed.

*It is further ordered* that LS shall inform the Directors of NMSS and NRR in writing of the date of closing of the transfer of the DPC interests in LACBWR, at least 1 business day prior to closing. Should the transfer of the license not be completed within 1 year of this Order's date of issuance, this Order shall become null and void; provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated October 8, 2015, as supplemented by letter dated December 15, 2015, and the associated NRC safety evaluation dated May 20, 2016, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01-F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who encounter problems with ADAMS should contact the NRC's PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737 or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Dated at Rockville, Maryland this 20th day of May 2016.

For the Nuclear Regulatory Commission.

**Scott Moore,**

*Acting Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2016-13013 Filed 6-1-16; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 52-027 and 52-028; NRC-2008-0441]**

### **Virgil C. Summer Nuclear Station, Units 2 and 3; South Carolina Electric & Gas Company, South Carolina Public Service Authority, Consolidation of Class 1E DC and Uninterruptible Power Supply System Spare Battery Termination Boxes**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption and combined license amendment; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow changes to the certification information of Tier 1 of the AP1000 generic design control document (DCD) and issuing License Amendment No. 43 to Combined Licenses (COL), NPF-93 and NPF-94. The COLs were issued to South Carolina Electric & Gas Company (SCE&G), and South Carolina Public Service Authority (together called the licensee) in March 2012, for the construction and operation of the Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, located in Fairfield County, South Carolina.

**DATES:** June 2, 2016.

**ADDRESSES:** Please refer to Docket ID NRC-2008-0441 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2008-0441. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then

select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated December 19, 2014 (ADAMS Accession No. ML14353A126). The licensee supplemented this request by letter dated February 25, 2015 (ADAMS Accession No. ML15056A429).

- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Specific information on NRC's PDR is available at <http://www.nrc.gov/reading-rm/pdr.html>.

#### **FOR FURTHER INFORMATION CONTACT:**

William (Billy) Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-5848; email: [Bill.Gleaves@nrc.gov](mailto:Bill.Gleaves@nrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction**

The NRC is granting an exemption from Tier 1 information in the certified DCD incorporated by reference in part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), appendix D, "Design Certification Rule for the AP1000 Design," and issuing License Amendment No. 43 to COLs, NPF-93 and NPF-94, to the licensee. The exemption is required by paragraph A.4 of Section VIII, "Processes for Changes and Departures," Appendix D to 10 CFR part 52 to allow the licensee to change Tier 1 information.

The granting of the exemption allows the changes to Tier 1 information requested in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently. Specifically, the amendments allow the implementation of changes to the Class 1E dc and Uninterruptible Power Supply System (IDS), replacing four spare termination boxes with a single spare battery termination box and minor cable raceway and cable routing changes. The exemptions allow the implementation of changes to the plant-specific Tier 1 UFSAR that are different from those in the generic Tier 1 information in the AP1000 Certified Design Control Document.

With the requested amendment, the licensee sought proposed changes related to the plant-specific Tier 1 tables related to the Class 1E dc and uninterruptible power supply system. The Tier 1 tables contain inspection, test, analysis, and acceptance criteria (ITAAC) and specifically, the licensee sought proposed changes to Tier 1 ITAAC Table 2.6.3-1 that contains lists Category I equipment and Tier 1 ITAAC Table 2.6.3-4 that contains component locations for this system. The proposed changes to plant-specific Tier 1 information also contain corresponding COL Appendix C and UFSAR Tier 2 information that would facilitate the replacement of four Class 1E DC and uninterruptible power supply system (IDS) spare termination boxes with a single spare battery termination box.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and 10 CFR 52.63(b)(1). The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML16068A149.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VCSNS Units 2 and 3 (COLs NPF-93 and NPF-94). These documents can be found in ADAMS under Accession Nos. ML16068A119 and ML16068A120, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF-93 and NPF-94 are available in ADAMS under Accession Nos. ML16068A113 and ML16068A117, respectively. A summary of the amendment documents is provided in Section III of this document.

## II. Exemption

Reproduced below is the exemption document issued to VCSNS, Units 2 and 3. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated December 19, 2014, supplemented February 25, 2015, the

South Carolina Electric & Gas Company (SC&G/licensee) requested from the Nuclear Regulatory Commission (NRC/Commission) an exemption from the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, Appendix D, "Design Certification Rule for AP1000 Design," Section VIII.B.6.b, Item (4), to allow a departure from the certified information as part of license amendment request (LAR) 13-29, "Consolidation of Class 1E DC and Uninterruptible Power Supply System Spare Battery Termination Boxes."

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation that supports this license amendment, which can be found at Agencywide Documents Access and Management System (ADAMS) Accession Number ML16068A149, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption, and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified AP1000 DCD Tier 1 information, as described in the licensee's request dated December 19, 2014, supplemented February 25, 2015. This exemption is related to, and necessary for, the granting of License Amendment No. 43, which is being issued concurrently with this exemption.

3. As explained in Section 5 of the NRC staff's Safety Evaluation that supports this license amendment (ADAMS Accession Number ML16068A149), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

## III. License Amendment Request

The request for the amendment and exemption was submitted by the letter dated December 19, 2014. The licensee supplemented this request by the letter

dated February 25, 2015. The proposed amendment is described in Section I, above.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on May 12, 2015 (80 FR 27200). No comments were received during the 30-day comment period.

The NRC staff has found that the amendment involves no significant hazards consideration. The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. The supplement dated February 25, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

## IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on December 19, 2014, and supplemented by the letter dated February 25, 2015. The exemption and amendment were issued on April 25, 2016, as part of a combined package to the licensee (ADAMS Accession No. ML16077A120).

Dated at Rockville, Maryland, this 24th day of May 2016.

For the Nuclear Regulatory Commission.

**John McKirgan,**

*Acting Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2016-12917 Filed 6-1-16; 8:45 am]

**BILLING CODE 7590-01-P**



**NUCLEAR REGULATORY COMMISSION**

[Docket No. 071–9305; NRC–2016–0106]

**Nuclear Waste Partnerships, LLC****AGENCY:** Nuclear Regulatory Commission.**ACTION:** Environmental assessment and finding of no significant impact; issuance.**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) for an exemption request from the Nuclear Waste Partnerships, LLC, (NWP) for the one-time shipment of transuranic waste in two TRUPACT–III packages from the Savannah River Site (SRS), Aiken, South Carolina, to the Waste Isolation Pilot Plant (WIPP), Carlsbad, New Mexico.**DATES:** The EA and FONSI referenced in this document are available on June 2, 2016.**ADDRESSES:** Please refer to Docket ID NRC–2016–0106 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2016–0106. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Jessie Muir Quintero, Office of NuclearMaterial Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7476; email: [Jessie.Muir-Quintero@nrc.gov](mailto:Jessie.Muir-Quintero@nrc.gov).**SUPPLEMENTARY INFORMATION:****I. Introduction**

The NRC is reviewing a request from NWP (or applicant), dated January 28, 2014 (ADAMS Accession No. ML14035A106), for an exemption—in accordance with section 71.12 of title 10 of the *Code of Federal Regulations* (10 CFR)—for the one-time transport of two Standard Large Box 2 (SLB2) waste boxes, each in a Model No. TRUPACT–III package.

Specifically, NWP requested an exemption from the requirements in 10 CFR 71.61, “Special requirements for Type B packages containing more than  $10^5 A_2$ ,” (*i.e.*, deep water immersion test). The applicant requested an exemption from the deep water immersion test because the design of a TRUPACT–III package containing more than  $10^5 A_2$  has not been demonstrated to meet the deep water immersion requirements of 10 CFR 71.61, *i.e.*, the package's undamaged containment system has not been shown that it can withstand an external water pressure of 2 MegaPascal for a period of not less than 1 hour without collapse, buckling, or in-leakage of water.

Along with the exemption request, NWP also requested approval from the NRC for an increase in: (1) The  $A_2$  limit from less than  $10^5 A_2$  to  $2.1 \times 10^5 A_2$  and (2) the authorized decay heat limit from 80 watts (W) to 190W. The  $A_2$  and decay heat limits are established in the TRUPACT–III Certificate of Compliance No. 9305, Revision No. 9 (ADAMS Accession No. ML15201A571).

The TRUPACT–III is a shipping container used to transport transuranic (TRU) waste within an SLB2. The TRUPACT–III packages are front loaded in a horizontal position on custom-designed trailers for truck transport. The two TRUPACT–III packages will be transported by truck from the SRS in South Carolina, to the U.S. Department of Energy WIPP, Carlsbad, New Mexico.

The SLB2 waste boxes have not been loaded into the TRUPACT–III packages yet and are currently sitting on a storage pad at SRS. The contents of each SLB2 waste box is primarily one half of a decommissioned tank used to process Plutonium-238.

**II. Environmental Assessment Summary**

Under the requirements of 10 CFR 51.21 and 51.30(a), the NRC staff developed an EA (ADAMS Accession

No. ML16119A075) to evaluate the proposed federal action, which is for the NRC to grant an exemption to NWP from the deep water immersion test requirements for the one-time transport of two TRUPACT–III packages from SRS to WIPP.

The EA defines the NRC's proposed action (*i.e.*, to grant NWP's exemption request from 10 CFR 71.61) and the purpose of and need for the proposed action. Evaluations of the potential environmental impacts of the proposed action and alternatives to the proposed action were presented, followed by the NRC's conclusion. Alternatives to the proposed action considered included: The no-action alternative (*i.e.*, not granting the exemption); further segmenting the waste; using a different type of package; and storing the waste until the activity decays below  $10^5 A_2$ . None of the alternatives are preferable to the proposed action because either the impacts are greater than the proposed action or they do not meet the purpose and need of the proposed action. Therefore, the proposed action is the preferred alternative.

The EA evaluates the potential environmental impacts of granting the exemption of the two subject TRUPACT–III packages from the deep water immersion test. The only potential impacts from granting the exemption would be radiological impacts associated with an accident scenario. However, the analysis in the EA shows that there would be no radiological impacts as a result of exempting these two packages from the deep water immersion test since the packages will not cross bodies of water with depths greater than 15 meters (m) (50 feet [ft]). Any nonradiological impacts would be no greater than those for the transport of any other TRUPACT–III package and would be bounded by previous environmental analysis (NUREG–0170, ADAMS Accession No. ML12192A283). Therefore, the environmental impacts of transporting these two TRUPACT–III packages from SRS to WIPP are still bounded by those impacts documented in NUREG–0170.

**III. Finding of No Significant Impact**

The NRC staff has prepared an EA and FONSI in support of the proposed action. The EA is available at ADAMS Accession No. ML16119A075. The NRC staff has concluded that the proposed action, for the NRC to grant an exemption to NWP from the deep water immersion test for the transport of two SLB2 waste boxes in Model No. TRUPACT–III packages from SRS to WIPP, will not significantly impact the

quality of the human environment, and that the proposed action is the preferred alternative. The environmental impacts of the two packages are bounded by previous NRC environmental analysis since the packages will not cross bodies of water greater than 15 m (50 ft) in depth.

The NRC provided the States of South Carolina and New Mexico a draft copy of this EA for a 30-day review on April 14, 2016 (ADAMS Accession Nos. ML16032A178 and ML16032A175, respectively). The NRC did not receive any comments on the draft EA (ADAMS Accession Nos. ML16134A603 and ML16144A079, respectively).

The NRC staff has determined that the exemption from the deep water immersion test for the two subject packages would have no impact on historic and cultural resources or ecological resources and, therefore, no consultations are necessary under Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act respectively.

The NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a FONSI is appropriate.

Dated at Rockville, Maryland, this 26th day of May, 2016.

For the Nuclear Regulatory Commission.

**Craig G. Erlanger,**

*Acting Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2016-13014 Filed 6-1-16; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2016-0094]

### Policy Statement for the Agreement State Program

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed policy statement; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has revised and consolidated two policy statements on NRC's Agreement State Programs: the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the "Statement of Principles and Policy for the Agreement State Program." The resulting proposed single policy statement has been revised to add that public health and safety

includes physical protection of agreement material.<sup>1</sup>

**DATES:** Submit comments by August 16, 2016. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0094. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN 12-H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Lisa Dimmick, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-0694, email: [Lisa.Dimmick@nrc.gov](mailto:Lisa.Dimmick@nrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

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#### **I. Obtaining Information and Submitting Comments**

##### *A. Obtaining Information*

Please refer to Docket ID NRC-2016-0094 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0094.
- *NRC's Agencywide Documents Access and Management System*

<sup>1</sup>The term 'agreement material' means the materials listed in Subsection 274b. of the Atomic Energy Act of 1954, as amended (AEA), over which the States may receive regulatory authority.

(ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is publicly available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

#### *B. Submitting Comments*

Please include Docket ID NRC-2016-0094 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

#### **II. Background**

The "Adequacy and Compatibility of Agreement State Programs" (62 FR 46517; September 3, 1997) presents the NRC's policy for determining the adequacy and compatibility of Agreement State programs. The "Statement of Principles and Policy for the Agreement State Program" (62 FR 46517; September 3, 1997) describes the respective roles and responsibilities of the NRC and the States in the administration of programs carried out under the 274b. State Agreement.<sup>2</sup> The

<sup>2</sup>Section 274 of the AEA provides a statutory basis under which the NRC discontinues portions of its regulatory authority to license and regulate

application of these two policy statements has significant influence on the safety and security of agreement material and on regulation of the more than 22,000 Agreement State and NRC materials licensees.

In the 1990s, the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” and the “Statement of Principles and Policy for the Agreement State Program” were developed by working groups consisting of Agreement States representatives and the NRC staff. A number of workshops and meetings were also held to gather stakeholder input. The Commission approved both policy statements in the Staff Requirements Memorandum (SRM) to SECY-95-112, “Final Policy Statement on Adequacy and Compatibility of Agreement State Programs,” and SECY-95-115, “Final ‘Statement of Principles and Policy for Agreement State Program’ and ‘Procedures for Suspension and Termination of an Agreement State Program,’” dated June 29, 1995 (ADAMS Accession No. ML003759325), but deferred implementation until all implementing procedures were completed and approved by the Commission. In the June 30, 1997, SRM to SECY-97-054, “Final Recommendations on Policy Statements and Implementing Procedures for: ‘Statement of Principles and Policy for the Agreement State Program’ and ‘Policy Statement on Adequacy and Compatibility of Agreement State Programs,’” the Commission approved the accompanying implementing procedures for the policy statements (ADAMS Accession No. ML051610710). The policy statements became effective on September 3, 1997 (62 FR 46517).

The NRC staff’s efforts to update the Agreement State policy statements began with the Commission’s direction provided in the SRM to SECY-10-0105, “Final Rule: Limiting the Quantity of Byproduct Material in a Generally Licensed Device (RIN 3150-AI33),” issued on December 2, 2010 (ADAMS Accession No. ML103360262). The Commission directed the NRC staff to update the Commission’s “Policy Statement on Adequacy and Compatibility of Agreement State Programs” and associated guidance documents to include both safety and source security considerations in the determination process. Because

byproduct materials; source materials; and quantities of special nuclear materials under critical mass. The mechanism for the transfer of NRC’s authority to a State is an agreement signed by the Governor of the State and the Chairman of the Commission, in accordance with Subsection 274b. of the AEA.

Agreement State adequacy and compatibility are key components of the Integrated Materials Performance Evaluation Program (IMPEP),<sup>3</sup> the Commission’s “Statement of Principles and Policy for the Agreement State Program” was revised concurrently. As directed, the NRC staff’s revisions to the policy statements added that public health and safety includes physical protection of agreement material.

The Commission approved publication of the proposed updates to the two policy statements in the revised SRM to SECY-12-0112, “Policy Statements on Agreement State Programs,” dated May 28, 2013 (ADAMS Accession No. ML13148A352). The NRC staff published the two proposed policy statements on June 3, 2013 (78 FR 33122), for a 75-day comment period. After receiving requests from the Organization of Agreement States (OAS) and the State of Florida to extend the public comment period, the NRC extended the comment period to September 16, 2013 (78 FR 50118; August 16, 2013). The NRC held two public meetings (July 18 and August 6, 2013), and a topical session during the OAS annual meeting in Reno, Nevada on August 28, 2013. The NRC staff specifically solicited comment on Compatibility Category B, and whether or not the policy statements should maintain the language from the 1997 “Policy Statement on Adequacy and Compatibility of Agreement State Programs” describing the adoption and number of compatible regulations.

The NRC staff received 51 comments on the policy statements, in general, and 45 comments on Compatibility Category B from 13 commenters, including Agreement States, industry organizations, and individuals. Consistency and flexibility were underlying themes expressed in the comments. The need for consistent application of the NRC’s policies and flexible implementation of these policies was mentioned in written comments, and was also expressed orally during the public meetings and OAS topical session. The NRC changed the policy statements as a result of the written comments and input from attendees to the two public meetings and the OAS topical session.

In COMSECY-14-0028, “Agreement State Program Policy Statements: Update on Recent Activities and Recommendations for Path Forward,” dated July 14, 2014 (ADAMS Accession

<sup>3</sup> The NRC developed the IMPEP to evaluate the adequacy and compatibility of Agreement State programs and the adequacy of the NRC’s nuclear materials program activities.

No. ML14156A277), the NRC staff proposed a plan to provide a consolidated policy statement. The Commission approved this plan in the SRM to COMSECY-14-0028, dated August 12, 2014 (ADAMS Accession No. ML14224A618). Accordingly, the NRC staff developed a single consolidated proposed policy statement for comment. In finalizing the policy statement, NRC staff identified and eliminated redundant language between the two policy statements, and removed detailed information on IMPEP and the “Principles of Good Regulation” (ADAMS Accession No. ML15083A026), as this material is not typically included in a high-level policy statement. The proposed single policy statement is included in its entirety in Section IV, “Proposed Policy Statement for the Agreement State Program,” of this document.

### III. Discussion of Proposed Changes

The NRC’s proposed consolidated policy statement addresses the Commission direction in the SRMs to SECY-10-0105, SECY-12-0112, and COMSECY-14-0028 and reflects written public comments and input received from public meetings and the OAS topical session. The NRC staff’s disposition of comments is presented in a comment resolution table (ADAMS Accession No. ML14073A549).

The Commission’s proposed consolidated policy removes details on IMPEP and the “Principles of Good Regulation.” The NRC added context and makes the proposed policy statement clearer and more consistent with other recent NRC policy statements. Lastly, the Commission added a description of the National Materials Program (NMP).

In response to the **Federal Register** notice (FRN) on June 3, 2013 (78 FR 33122), 45 comments were received on the description of Compatibility Category B in the proposed policy statement. In the FRN, the NRC specifically solicited comment on the following topics concerning Compatibility Category B:

1. *To clarify the meaning of a “significant transboundary implication,”<sup>4</sup> the NRC is proposing to define a significant transboundary implication as “one which crosses regulatory jurisdictions, has a particular impact on public health and safety, and needs to be addressed to ensure uniformity of regulation on a nationwide basis.” However, the NRC*

<sup>4</sup> The NRC staff solicited public comment on the phrase “significant transboundary implication” in the **Federal Register** on June 3, 2013 (78 FR 33122).

recognizes that the use of the word “particular” can be vague and cause confusion. The NRC is requesting specific comments on the proposed draft definition of “significant transboundary implication” and whether the word “particular” should be replaced with the phrase “significant and direct.”

Based on comments received, the NRC staff noted that there is a wide variation on the interpretation of the description of Compatibility Category B and of the definition of significant transboundary implication. In light of this, the Commission is proposing a new description of Compatibility Category B to eliminate the phrase “significant transboundary implication.” The new language, (*i.e.*, “cross jurisdictional boundaries”) embodies the original description of Compatibility Category B and eliminates the confusion surrounding the language incorporated into the 1997 version of the policy statement.

2. *Program elements with significant transboundary implications are illustrated by examples in the 1997 version of the policy statement. The NRC staff concluded the examples listed are not all-inclusive and could lead to misinterpretation by stakeholders, Agreement States, and the NRC staff. The NRC staff is seeking additional comment on whether or not the examples should be retained in this section of the policy statement.*

The majority of commenters requested that examples of program elements considered Compatibility Category B continue to be included in the description. No changes were made to the policy statement. The Commission retained examples in Section E.2.ii.

3. *The NRC is requesting comments on the description of Compatibility Category B as written in Section IV. of this notice and whether or not the movement of goods and services, which historically has been a main factor in determining whether an issue has transboundary implications, should be considered in the definition of significant transboundary implication.*

Specific comments were received regarding the consideration of the movement of goods and services. The majority of the commenters felt that it was not necessary to include the consideration of the movement of goods and services in the description of Compatibility Category B. The Commission has concluded that the movement of goods and services should not be considered in assessing compatibility and made no change to the proposed policy statement.

4. *The NRC is requesting comments on whether or not economic factors should be a consideration when making a Compatibility Category B determination. The NRC believes that health and safety should be the primary consideration in making a Compatibility B determination and that economic factors should not be a consideration.*

The comments included several comments that differed on whether or not economic factors should be considered. Based on the comments received and in reviewing previous rationale on this topic as discussed in SECY-95-112 “Final Policy Statement on Adequacy and Compatibility of Agreement State Programs,” the Commission determined that economic factors (*i.e.*, those costs incurred by the regulated community to comply with regulatory requirement(s)) should not be considered. No change to the proposed policy statement has been made.

The NRC also solicited specific comment on the use of alternative wording regarding the expectation on the number of regulatory requirements that Agreement States will be requested to adopt in an identical manner to maintain compatibility. The 1997 version of the policy statement had specific text in three places regarding the expectation for adopting requirements in an identical manner to maintain compatibility. Six commenters supported returning the wording back to the text that was originally published in 1997. Based on comments received, the Commission retained the original language from the 1997 version in the proposed policy statement.

Two commenters questioned the description of Compatibility Category D and indicated the description in the policy statement as published in the **Federal Register** on June 3, 2013 (78 FR 33122), appears to discuss compatibility in general and does not describe Compatibility Category D as it is defined in Management Directive 5.9, “Adequacy and Compatibility of Agreement State Programs” (ADAMS Accession No. ML041770094). The Commission agreed and moved the language listed under Compatibility Category D, in the proposed policy statement, to the introductory paragraph of Section E.2., “Compatibility,” and revised the description of Compatibility Category D in Section E.2.iv.

The criteria for adequacy and compatibility as proposed in this policy statement will provide Agreement States with flexibility in the administration of their individual programs. Recognizing that Agreement States have responsibilities for radiation sources other than agreement material, this

proposed policy statement would allow Agreement States to fashion their programs so as to reflect specific State needs and preferences while accomplishing a compatible national program consistent with Section 274 of the AEA.

The requirements in Compatibility Categories A, B, and C will allow the NRC to ensure that an orderly pattern for the regulation of agreement material exists nationwide. The NRC believes that this approach achieves a proper balance between the Agreement States’ need for flexibility and the need for coherent and compatible regulation of agreement material across the country.

#### IV. Proposed Policy Statement for the Agreement State Program

##### A. Purpose

The purpose of this policy statement for the Agreement State Program is to describe the respective roles and responsibilities of the U.S. Nuclear Regulatory Commission (NRC) and Agreement States in the administration of programs carried out under Section 274 of the Atomic Energy Act of 1954, as amended (AEA).<sup>5</sup> Section 274 provides broad authority for the NRC to establish a unique Federal and State relationship in the administration of regulatory programs for the protection of public health and safety in the industrial, medical, commercial, and research uses of agreement material. This policy statement supersedes the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” and the “Statement of Principles and Policy for the Agreement State Program.”

This policy statement addresses the Federal-State interaction under the AEA to (1) establish and maintain agreements with States under Subsection 274b. that provide for discontinuance by the NRC, and the assumption by the State, of responsibility for administration of a regulatory program for the safe and secure use of agreement material; (2) ensure that post-agreement interactions between the NRC and Agreement State radiation control programs are coordinated; and (3) ensure Agreement States provide adequate protection of public health and safety and maintain programs that are compatible with the NRC’s regulatory program.

Although not defined in the AEA, the National Materials Program (NMP) is a

<sup>5</sup> Subsection 274b. of the AEA authorizes the NRC to enter into an agreement by which the NRC discontinues and the State assumes regulatory authority over some or all of these materials. The material over which the State receives regulatory authority under such agreement is termed “agreement material.”

term to describe the broad collective effort within which both NRC and the Agreement States function in carrying out their respective regulatory programs for agreement material. The mission of the NMP is to provide a coherent national system for the regulation of agreement material with the goal of protecting public health and safety through compatible regulatory programs. Under the NMP, the NRC and Agreement States function as regulatory partners. The roles and responsibilities of the NRC and the Agreement States are based on their legislative authority, program needs, and expertise. Two national organizations—the Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors, Inc. (CRCPD)—which are composed of State radiation protection programs, also play important roles within the NMP.

### B. Background

This policy statement is intended solely as guidance for the NRC and the Agreement States in the implementation of the Agreement State Program. This policy statement does not itself impose legally binding requirements on the Agreement States. In addition, nothing in this policy statement expands the legal authority of Agreement States beyond that already granted to them by Section 274 of the AEA and other relevant legal authority; nor does this policy statement diminish or constrain the NRC's authority under the AEA. Implementation procedures adopted pursuant to this policy statement shall be consistent with the legal authorities of the NRC and the Agreement States.

This policy statement presents the NRC's policy for determining the adequacy and compatibility of Agreement State programs. This policy statement clarifies the meaning and use of the terms "adequate to protect public health and safety" and "compatible with the NRC's regulatory program" as applied to Agreement State programs. The terms "adequate" and "compatible" represent fundamental concepts in the Agreement State programs authorized in 1959 by Section 274 of the AEA. Subsection 274d. states that the NRC shall enter into an Agreement under Subsection 274b., which discontinues the NRC's regulatory authority over specified AEA radioactive materials and activities within a State, provided that the State's program is adequate to protect public health and safety and is compatible with the Commission's regulatory program. Subsection 274g. authorizes and directs the NRC to cooperate with States in the formulation of standards to assure that State and

NRC programs for protection against hazards of radiation will be coordinated and compatible. Subsection 274j.(1) requires the NRC to periodically review the Agreements and actions taken by States under the Agreements to ensure compliance with the provisions of Section 274.

The NRC and Agreement State radiation control programs maintain regulatory authority for the safe and secure handling, use, and storage of agreement material. These programs have always included the security of agreement material as an integral part of their health and safety mission as it relates to controlling and minimizing the risk of exposure to workers and the public. Following the events of September 11, 2001, the NRC's regulatory oversight has included developing and implementing enhanced security measures. For the purposes of this policy statement, public health and safety includes physical protection of agreement material.

### C. Statement of Legislative Intent

In 1954, the AEA did not initially specify a role for the States in regulating the use of nuclear material. Many States were concerned as to what their responsibilities in this area might be and expressed interest in clearly defining the boundaries of Federal and State authority over nuclear material. This need for clarification was particularly important in view of the fact that although the Federal Government retained sole responsibility for protecting public health and safety from the radiation hazards of AEA radioactive materials, defined as byproduct, source, and special nuclear material, the States maintained the responsibility for protecting the public from the radiation hazards of other sources such as x-ray machines and naturally occurring radioactive material.

Consequently, in 1959, Congress enacted Section 274 of the AEA to establish a statutory framework under which States could assume and the NRC could discontinue regulatory authority over byproduct, source, and small quantities of special nuclear material insufficient to form a critical mass. The NRC continued to retain regulatory authority over the licensing of certain facilities and activities including, nuclear reactors, quantities of special nuclear material sufficient to form a critical mass, the export and import of nuclear materials, and matters related to common defense and security.

The legislation did not authorize a wholesale relinquishment or abdication by the Commission of its regulatory responsibilities but only a gradual,

carefully considered turnover. Congress recognized that the Federal Government would need to assist the States to ensure that they developed the capability to exercise their regulatory authority in a competent and effective manner. Accordingly, the legislation authorized the NRC to provide training, with or without charge, and other services to State officials and employees as the Commission deems appropriate. However, in rendering this assistance, Congress did not intend that the NRC would provide any grants to a State for the administration of a State regulatory program. This was fully consistent with the objectives of Section 274 to qualify States to assume independent regulatory authority over certain defined areas under their Agreement and to permit the NRC to discontinue its regulatory responsibilities in those areas.

In order to discontinue its authority, the NRC must find that the State program is compatible with the NRC program for the regulation of agreement material and that the State program is adequate to protect public health and safety. In addition, the NRC has an obligation, pursuant to Subsection 274j. of the AEA, to periodically review existing Agreement State programs to ensure continued adequacy and compatibility. Subsection 274j. of the AEA provides that the NRC may terminate or suspend all or part of its agreement with a State if the NRC finds that such termination is necessary to protect public health and safety or that the State has not complied with the provisions of Subsection 274j. In these cases, the NRC must offer the State reasonable notice and opportunity for a hearing. In cases where the State has requested termination of the agreement, notice and opportunity for a hearing are not necessary. In addition, the NRC may temporarily suspend all or part of an agreement in the case of an emergency situation.

### D. Program Implementation

1. Implementation of the Agreement State Program is described below and includes (a) Principles of Good Regulation; (b) performance assessment on a consistent and systematic basis; (c) the responsibility to ensure adequate protection of public health and safety, including physical protection of agreement material; (d) compatibility in areas of national interest; and (e) sufficient flexibility in program implementation and administration to accommodate individual State needs.

#### i. Principles of Good Regulation

In 1991, the Commission adopted the "Principles of Good Regulation" to

serve as a guide to both agency decision making and to individual behavior of NRC employees. There are five Principles of Good Regulation: Independence, openness, efficiency, clarity, and reliability. Adherence to these principles has helped to ensure that the NRC's regulatory activities have been of the highest quality, and are appropriate and consistent. The "Principles of Good Regulation" recognize that strong, vigilant management and a desire to improve performance are prerequisites for success, for both regulators and the regulated industry. The NRC's implementation of these principles has served the public, the Agreement States, and the regulated community well. Such principles are useful as a part of a common culture of the NMP that the NRC and the Agreement States share as co-regulators. Accordingly, the NRC encourages each Agreement State to adopt a similar set of principles for use in its own regulatory program. These principles should be incorporated into the day-to-day operational fabric of the NMP.

#### ii. Performance Assessment

To ensure that Agreement State programs continue to provide adequate protection of public health and safety and are compatible with the NRC's regulatory program, periodic program assessment is needed. The NRC, in cooperation with the Agreement States, established and implemented the IMPEP. The IMPEP is a performance evaluation process that provides the NRC and Agreement State management with systematic, integrated, and reliable evaluations of the strengths and weaknesses of their respective radiation control programs and identification of areas needing improvement.

#### iii. Adequate To Protect Public Health and Safety

The NRC and the Agreement States have the responsibility to ensure adequate protection of public health and safety in the administration of their respective regulatory programs, including physical protection of agreement material. Accordingly, the NRC and Agreement State programs shall possess the requisite supporting legislative authority, implementing organization structure and procedures, and financial and human resources to effectively administer a radiation control program that ensures adequate protection of public health and safety.

#### iv. Compatible in Areas of National Interest

The NRC and the Agreement States have the responsibility to ensure that the radiation control programs are compatible. Such radiation control programs should be based on a common regulatory philosophy including the common use of definitions and standards. The programs should be effective and cooperatively implemented by the NRC and the Agreement States and also should provide uniformity and achieve common strategic outcomes in program areas having national significance.

Such areas of national significance include aspects of licensing, inspection and enforcement, response to incidents and allegations, and safety reviews for the manufacture and distribution of sealed sources and devices. Furthermore, communication using a nationally accepted set of terms with common understanding, ensuring an adequate level of protection of public health and safety that is consistent and stable across the nation, and evaluation of the effectiveness of the NRC and Agreement State programs for the regulation of agreement material with respect to protection of public health and safety are essential to maintaining a strong NMP.

#### v. Flexibility

With the exception of those compatibility areas where programs should be essentially identical, Agreement State radiation control programs have flexibility in program implementation and administration to accommodate individual State preferences, State legislative direction, and local needs and conditions. A State has the flexibility to design its own program, including incorporating more stringent, or similar, requirements provided that the requirements for adequate protection of public health and safety are met and compatibility is maintained. However, the exercise of such flexibility should not preclude a practice authorized by the AEA, and in the national interest.

### 2. New Agreements

Section 274 of the AEA requires that once a decision to request Agreement State status is made by the State, the Governor of that State must certify to the NRC that the State desires to assume regulatory responsibility and has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State that would be covered by the proposed agreement.

This certification will be provided in a letter to the NRC that includes a number of documents in support of the certification. These documents include the State's enabling legislation, the radiation control regulations, staffing plan, a narrative description of the State program's policies, practices, and procedures, and a proposed agreement.

The NRC's policy statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (46 FR 7540, January 23, 1981; as amended by policy statements published at 46 FR 36969, July 16, 1981; and 48 FR 33376, July 21, 1983), describes the content these documents are required to cover. The NRC reviews the request and publishes notice of the proposed agreement in the **Federal Register** to provide an opportunity for public comment. After consideration of public comments, if the NRC determines that the proposed State program is adequate for protection of public health and safety and compatible with the NRC's regulatory program, the Governor and Chairman of the NRC sign a formal document memorializing the agreement.

### 3. Program Assistance

The NRC will offer training and other assistance to States, such as assistance in developing regulations and program descriptions to help individual States prepare their request for entering into an Agreement and to help them prior to the assumption of regulatory authority. Following approval of the agreement and assumption of regulatory authority by a new Agreement State, to the extent permitted by resources, the NRC may provide training opportunities and offer other assistance such as review of proposed regulatory changes to help Agreement States administer their regulatory responsibilities. However, it is the responsibility of the Agreement State to ensure that they have a sufficient number of qualified staff to implement their program. If the NRC is unable to provide the training, the Agreement State will need to do so.

The NRC may also use its best efforts to provide specialized technical assistance to Agreement States to address unique or complex licensing, inspection, incident response, and limited enforcement issues. In areas where Agreement States have particular expertise or are in the best position to provide immediate assistance to the NRC or other Agreement States, they are encouraged to do so. In addition, the NRC and Agreement States will keep each other informed about relevant aspects of their programs.

If an Agreement State experiences difficulty in implementing its program, the NRC will, to the extent possible, assist the State in maintaining the effectiveness of its radiation control program. Under certain conditions, an Agreement State can also voluntarily return all or part of its Agreement State program.

#### 4. Performance Evaluation

Under Section 274 of the AEA, the NRC retains oversight authority for ensuring that Agreement State programs provide adequate protection of public health and safety and are compatible with the NRC's regulatory program. In fulfilling this statutory responsibility, the NRC will determine whether the Agreement State programs are adequate and compatible prior to entrance into a Subsection 274b. agreement and will periodically review the program to ensure they continue to be adequate and compatible after an agreement becomes effective.

The NRC, in cooperation with the Agreement States, established and implemented the IMPEP. As described in Management Directive 5.6 "Integrated Materials Performance Evaluation Program (IMPEP)," IMPEP is a performance evaluation process that provides the NRC and Agreement State management with systematic, integrated, and reliable evaluations of the strengths and weaknesses of their respective radiation control programs and identification of areas needing improvement. The same criteria are used to evaluate and ensure that regulatory programs are adequate to protect public health and safety and that Agreement State programs are compatible with the NRC's program. The IMPEP process employs a Management Review Board, composed of senior NRC managers and an Agreement State liaison provided by the OAS to make a determination of program adequacy and compatibility.

As a part of the performance evaluation process, the NRC will take necessary actions to help ensure that Agreement State radiation control programs remain adequate and compatible. These actions may include more frequent IMPEP reviews of Agreement State programs and providing assistance to help address weaknesses or areas needing improvement within an Agreement State program. Monitoring, heightened oversight, probation, suspension, or termination of an agreement may be applied for certain program deficiencies or emergencies (e.g. loss of funding, natural or man-made events, pandemic). The NRC's actions in addressing

program deficiencies or emergencies will be a well-defined predictable process that is consistently and fairly applied.

#### 5. Program Funding

Section 274 of the AEA permits the NRC to offer training and other assistance to a State in anticipation of entering into an Agreement with the NRC. Section 274 of the AEA does not allow Federal funding for the administration of Agreement State radiation control programs. Given the importance to public health and safety of having well trained radiation control program personnel, the NRC may offer certain relevant training courses and notify Agreement State personnel of their availability. These training programs also help to ensure compatible approaches to licensing and inspection and thereby strengthen the NMP.

#### 6. Regulatory Development

The NRC and Agreement States will cooperate in the development of both new and revised regulations and policies. Agreement States will have early and substantive involvement in the development of regulations affecting protection of public health and safety and of policies and guidance documents affecting administration of the Agreement State program. The NRC and Agreement States will keep each other informed about their individual regulatory requirements (e.g., regulations, orders, or license conditions) and the effectiveness of those regulatory requirements so that each has the opportunity to make use of proven regulatory approaches to further the effective and efficient use of resources. In order to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis, Agreement States should provide a similar opportunity to the NRC to make it aware of, and to provide the opportunity to review and comment on, proposed changes in regulations and significant changes to Agreement State programs, policies, and regulatory guidance.

Two national organizations composed of State radiation protection programs facilitate participation and involvement with the development of regulations, guidance, and policy. The OAS provides a forum for Agreement States to work with each other and with the NRC on regulatory issues, including centralized communication on radiation protection matters between the Agreement States and the NRC. The CRCPD assists its members in their efforts to protect the public, radiation workers, and patients

from unnecessary radiation exposure. One product of the CRCPD is the Suggested State Regulations for use by its members. The NRC reviews Suggested State Regulations for compatibility.

#### E. Adequacy and Compatibility

In accordance with Section 274 of the AEA, any State that chooses to establish an Agreement State program must provide for an acceptable level of protection of public health and safety. This is the "adequacy" component. The Agreement State must also ensure that its program serves an overall nationwide interest in radiation protection. This is the "compatibility" component.

By adopting the criteria for adequacy and compatibility as discussed in this policy statement, the NRC provides a broad range of flexibility in the administration of individual Agreement State programs. Recognizing the fact that Agreement States have responsibilities for radiation sources other than agreement material, the NRC allows Agreement States to fashion their programs to reflect specific State needs and preferences.

The NRC will minimize the number of NRC regulatory requirements that the Agreement States will be requested to adopt in an identical manner to maintain compatibility. At the same time, requirements in these compatibility categories allow the NRC to ensure that an orderly pattern for the regulation of agreement material exists nationwide. The NRC believes that this approach achieves a proper balance between the need for Agreement State flexibility and the need for an NMP that is coherent and compatible in the regulation of agreement material across the country.

Program elements<sup>6</sup> for adequacy focus on the protection of public health and safety within a particular Agreement State while program elements for compatibility focus on the impacts of an Agreement State's regulation of agreement material on a nationwide basis or its potential effects on other jurisdictions. Some program elements for compatibility may also impact public health and safety; therefore, they may also be considered program elements for adequacy.

In identifying those program elements for adequate and compatible programs, or any changes thereto, the NRC staff

<sup>6</sup>For the purposes of this policy statement, "program element" means any component or function of a radiation control regulatory program, including regulations and other legally binding requirements imposed on regulated persons, which contributes to implementation of that program.



will coordinate with the Agreement States.

#### 1. Adequacy

An “adequate” program includes those program elements of a radiation control regulatory program necessary to maintain an acceptable level of protection of public health and safety within an Agreement State. An Agreement State’s radiation control program is adequate to protect public health and safety if administration of the program provides reasonable assurance of protection of public health and safety in regulating the use of agreement material. The level of protection afforded by the program elements of the NRC’s materials regulatory program is presumed to be adequate to provide a reasonable assurance of protection of public health and safety. Therefore, the overall level of protection of public health and safety provided by a State program should be equivalent to, or greater than, the level provided by the NRC program. To provide reasonable assurance of protection of public health and safety, an Agreement State program should contain the five essential program elements, identified in items i. through v. of this section, that the NRC and Agreement States will use to define the scope of the review of the program. The NRC and Agreement States will also consider, when appropriate, other program elements of an Agreement State that appear to affect the program’s ability to provide reasonable assurance of the protection of public health and safety.

##### i. Legislation and Legal Authority

Agreement State statutes shall: (a) Authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under an Agreement with the NRC; (b) authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of protection of public health and safety; (c) authorize the State to license, inspect, and enforce legally binding requirements such as regulations and licenses; and (d) be otherwise consistent with applicable Federal statutes. In addition, the State should have existing legally enforceable measures such as generally applicable rules, orders, license provisions, or other appropriate measures, necessary to allow the State to ensure adequate protection of public health and safety in the regulation of agreement material in the State. Specifically, Agreement States should adopt legally binding requirements

based on those identified by the NRC because of their particular health and safety significance. In adopting such requirements, Agreement States shall implement the essential objectives articulated in the NRC requirements.

##### ii. Licensing

The Agreement State shall conduct appropriate evaluations of proposed uses of agreement material, before issuing a license to authorize such use, to ensure that the proposed licensee’s need and proposed uses of agreement material are in accordance with the AEA and that operations can be conducted safely. Licenses shall provide for reasonable assurance of public health and safety protection in the conduct of licensed activities.

##### iii. Inspection and Enforcement

The Agreement State shall periodically conduct inspections of licensed activities involving agreement material to provide reasonable assurance of safe licensee operations and to determine compliance with its regulatory requirements. When determined to be necessary by the State, the State should take timely enforcement action against licensees through legal sanctions authorized by State statutes and regulations.

##### iv. Personnel

The Agreement State shall be staffed with a sufficient number of qualified personnel to implement its regulatory program for the control of agreement material.

##### v. Incidents and Allegations

The Agreement State shall respond to and conduct timely inspections or investigations of incidents, reported events, and allegations involving agreement material within the State’s jurisdiction to provide reasonable assurance of protection of public health and safety.

#### 2. Compatibility

A “compatible” program consists of those program elements necessary to sustain an orderly pattern of regulation of radiation protection. An Agreement State has the flexibility to adopt and implement program elements within the State’s jurisdiction that are not addressed by the NRC, or program elements not required for compatibility (*i.e.*, those NRC program elements not assigned to Compatibility Category A, B, or C). However, such program elements of an Agreement State relating to agreement material shall (1) be compatible with those of the NRC (*i.e.*, should not create conflicts,

duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis); (2) not preclude a practice authorized by the AEA and in the national interest; and (3) not preclude the ability of the Commission to evaluate the effectiveness of the NRC and Agreement State programs for agreement material with respect to protection of public health and safety. For purposes of compatibility, the State shall adopt program elements assigned Compatibility Categories A, B, and C.

##### i. Category A—Basic Radiation Protection Standards

This category includes basic radiation protection standards that encompass dose limits, concentration and release limits related to radiation protection in part 20 of title 10 of the *Code of Federal Regulations* (10 CFR), that are generally applicable, and the dose limits for land disposal of radioactive waste in 10 CFR 61.41.<sup>7</sup> Also included in this category are a limited number of definitions, signs, labels, and scientific terms that are necessary for a common understanding of radiation protection principles among licensees, regulatory agencies, and members of the public. Such State standards should be essentially identical to those of the NRC, unless Federal statutes provide the State authority to adopt different standards. Basic radiation protection standards do not include constraints or other limits below the level associated with “adequate protection” that take into account considerations such as economic cost and other factors.

##### ii. Category B—Cross Jurisdictional Program Elements

This category pertains to a small number of program elements that cross jurisdictional boundaries and that should be addressed to ensure uniformity of regulation on a nationwide basis. Examples include, but are not limited to, sealed source and device registration certificates, transportation regulations, and radiography certification. Agreement State program elements shall be essentially identical to those of the NRC. Because program elements used in the Agreement State Program are necessary to maintain an acceptable level of

<sup>7</sup> The NRC will implement this category consistent with its earlier decision in the low-level waste area to allow Agreement States the flexibility to establish pre-closure operational release limit objectives, as low as is reasonably achievable goals or design objectives at such levels as the State may deem necessary or appropriate, as long as the level of protection of public health and safety is essentially identical to that afforded by NRC requirements.

protection of public health and safety, economic factors<sup>8</sup> should not be considered.

### iii. Category C—Other NRC Program Elements

These are other NRC program elements that are important for an Agreement State to implement in order to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Such Agreement State program elements should embody the essential objective of the corresponding NRC program elements. Agreement State program elements may be more restrictive than NRC program elements; however, they should not be so restrictive as to prohibit a practice authorized by the AEA and in the national interest without an adequate public health and safety or environmental basis related to radiation protection.

### iv. Category D—Program Elements Not Required for Compatibility

These are program elements that do not meet any of the criteria listed in Compatibility Category A, B, or C above and are not required to be adopted for purposes of compatibility.

### v. Category NRC—Areas of Exclusive NRC Regulatory Authority

These are program elements over which the NRC cannot discontinue its regulatory authority pursuant to the AEA or provisions of title 10 of the *Code of Federal Regulations*. However, an Agreement State may inform its licensees of these NRC requirements through an appropriate mechanism under the State's administrative procedure laws as long as the State adopts these provisions solely for the purposes of notification, and does not exercise any regulatory authority as a result.

### F. Conclusion

The NRC and Agreement States will continue to jointly assess the NRC and Agreement State programs for the regulation of agreement material to identify specific changes that should be considered based on experience or to further improve overall safety, performance, compatibility, and effectiveness.

The NRC encourages Agreement States to adopt and implement program

elements that are patterned after those adopted and implemented by the NRC to foster and enhance an NMP that establishes a coherent and compatible nationwide program for the regulation of agreement material.

Dated at Rockville, Maryland, this 25th day of May, 2016.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary for the Commission.*

[FR Doc. 2016-13006 Filed 6-1-16; 8:45 am]

**BILLING CODE 7590-01-P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act Cancellation Notice—OPIC June 1, 2016 Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 81, Number 90, Pages 28906-28907) on Tuesday, May 10, 2016. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 p.m., June 1, 2016 in conjunction with OPIC's June 9, 2016 Board of Directors meeting has been cancelled.

#### CONTACT PERSON FOR INFORMATION:

Information on the hearing cancellation may be obtained from Catherine F.I. Andrade at (202) 336-8768, or via email at [Catherine.Andrade@opic.gov](mailto:Catherine.Andrade@opic.gov).

Dated: May 31, 2016.

**Catherine F.I. Andrade,**

*OPIC Corporate Secretary.*

[FR Doc. 2016-13149 Filed 5-31-16; 4:15 pm]

**BILLING CODE 3210-01-P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2016-143 and CP2016-180; Order No. 3325]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 220 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* June 3, 2016.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit

comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

#### FOR FURTHER INFORMATION CONTACT:

David A. Trissell, General Counsel, at 202-789-6820.

#### SUPPLEMENTARY INFORMATION:

### Table of Contents

- I. Introduction
- II. Notice of Commission Action
- III. Ordering Paragraphs

### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30-35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 220 to the competitive product list.<sup>1</sup>

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

### II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016-143 and CP2016-180 to consider the Request pertaining to the proposed Priority Mail Contract 220 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 3, 2016. The public portions of these filings 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 these dockets.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2016-143 and CP2016-180 to

<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 220 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 26, 2016 (Request).

<sup>8</sup> For the purposes of this policy statement, economic factors are those costs incurred by the regulated community to comply with regulations that impact more than one regulatory jurisdiction in the NMP.

consider the matters raised in each docket.

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 these proceedings (Public Representative).

3. Comments are due no later than June 3, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2016-13021 Filed 6-1-16; 8:45 am]

**BILLING CODE 7710-FW-P**

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016-144 and CP2016-181; Order No. 3330]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 221 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* June 3, 2016.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

#### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. Notice of Commission Action
- III. Ordering Paragraphs

#### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30-.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 221 to the competitive product list.<sup>1</sup>

<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 221 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 26, 2016 (Request).

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

#### II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016-144 and CP2016-181 to consider the Request pertaining to the proposed Priority Mail Contract 221 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 3, 2016. The public portions of these filings 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 these dockets.

#### III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016-144 and CP2016-181 to consider the matters raised in each docket.

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 these proceedings (Public Representative).

3. Comments are due no later than June 3, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2016-13026 Filed 6-1-16; 8:45 am]

**BILLING CODE 7710-FW-P**

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016-145 and CP2016-182; Order No. 3326]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 222 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* June 3, 2016.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

#### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. Notice of Commission Action
- III. Ordering Paragraphs

#### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30-.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 222 to the competitive product list.<sup>1</sup>

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

#### II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016-145 and CP2016-182 to consider the Request pertaining to the proposed Priority Mail Contract 222 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent

<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 222 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 26, 2016 (Request).

with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 3, 2016. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2016-145 and CP2016-182 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than June 3, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2016-13022 Filed 6-1-16; 8:45 am]

**BILLING CODE 7710-FW-P**

### POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016-148 and CP2016-185; Order No. 3328]

#### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of First-Class Package Service Contract 55 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* June 3, 2016.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

**SUPPLEMENTARY INFORMATION:**

#### Table of Contents

I. Introduction

II. Notice of Commission Action

III. Ordering Paragraphs

#### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30-.35, the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 55 to the competitive product list.<sup>1</sup>

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

#### II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016-148 and CP2016-185 to consider the Request pertaining to the proposed First-Class Package Service Contract 55 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 3, 2016. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

#### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2016-148 and CP2016-185 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than June 3, 2016.

<sup>1</sup> Request of the United States Postal Service to Add First-Class Package Service Contract 55 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 26, 2016 (Request).

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2016-13024 Filed 6-1-16; 8:45 am]

**BILLING CODE 7710-FW-P**

### POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016-147 and CP2016-184; Order No. 3329]

#### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Parcel Select Contract 16 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* June 3, 2016.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

**SUPPLEMENTARY INFORMATION:**

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I. Introduction

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III. Ordering Paragraphs

#### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30-.35, the Postal Service filed a formal request and associated supporting information to add Parcel Select Contract 16 to the competitive product list.<sup>1</sup>

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification

<sup>1</sup> Request of the United States Postal Service to Add Parcel Select Contract 16 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 26, 2016 (Request).

Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

## II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–147 and CP2016–184 to consider the Request pertaining to the proposed Parcel Select Contract 16 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 3, 2016. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2016–147 and CP2016–184 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than June 3, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2016–13025 Filed 6–1–16; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–146 and CP2016–183; Order No. 3327]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.  
**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 223 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* June 3, 2016.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

### SUPPLEMENTARY INFORMATION:

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- I. Introduction
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#### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30–.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 223 to the competitive product list.<sup>1</sup>

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

#### II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–146 and CP2016–183 to consider the Request pertaining to the proposed Priority Mail Contract 223 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 3, 2016. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 223 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 26, 2016 (Request).

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2016–146 and CP2016–183 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than June 3, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2016–13023 Filed 6–1–16; 8:45 am]

**BILLING CODE 7710–FW–P**

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Request for Information on the Development of the 2017 National Plan for Civil Earth Observations

**AGENCY:** Office of Science and Technology Policy.

**ACTION:** Notice of Request for Information (RFI).

**SUMMARY:** On behalf of the U.S. Group on Earth Observations (USGEO), a Subcommittee of the National Science and Technology Council (NSTC) Committee on Environment, Natural Resources, and Sustainability (CENRS), the White House Office of Science and Technology Policy (OSTP) requests input from all interested parties regarding recommendations for the development of the 2017 *National Plan for Civil Earth Observations* (“National Plan”, or “Plan”). An electronic template with questions will be posted at [www.usgeo.gov](http://www.usgeo.gov). Comments of up to approximately 2,000 characters per question are requested and must be received by 11:59 p.m. (Eastern Standard Time), July 1, 2016 to be considered. The public input provided in response to this Notice will inform the Office of Science and Technology Policy (OSTP) as it works with Federal agencies and other stakeholders to develop this Plan.

**DATES:** Responses must be received by 11:59 p.m. (Eastern Standard Time), July 1, 2016, to be considered.

**ADDRESSES:** You may submit comments by any of the following methods. The first method is preferred by OSTP.

- *Downloadable form:* To aid in information collection and analysis, the

Office of Science and Technology Policy (OSTP) encourages responses to be provided by filling out the downloadable form located at <http://www.whitehouse.gov/administration/eop/ostp/library/shareyourinput> and emailing that form, as an attachment, to [env\\_energy@ostp.eop](mailto:env_energy@ostp.eop). Please include “National Plan for Civil Earth Observations” in the subject line of the message.

- **Fax:** (202) 456–6071. On the cover page, please state “National Plan for Civil Earth Observations, attn: Timothy Stryker”.

- **Mail:** Office of Science and Technology Policy, 1650 Pennsylvania Avenue NW., Washington, DC, 20504. Information submitted by postal mail should be postmarked by July 1, 2016.

**Instructions:** Response to this RFI is voluntary. Respondents need not reply to all questions listed. Each individual or institution is requested to submit only one response. OSTP may post responses to this RFI without change, online. OSTP therefore requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

**FOR FURTHER INFORMATION CONTACT:** Timothy Stryker, Director, U.S. Group on Earth Observations Program, OSTP. 202–419–3471 [tstryker@ostp.eop.gov](mailto:tstryker@ostp.eop.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The U.S. Government is the world’s largest single provider of civil environmental and Earth-system data. These data are derived from Earth observations collected by numerous Federal agencies and partners in support of their missions and are critical to the protection of human life and property, economic growth, national and homeland security, and scientific research.

Federal investments in Earth-observation activities ensure that decision makers, businesses, first responders, farmers, and a wide array of other stakeholders have the information they need about climate and weather; natural hazards; land-use change; ecosystem health; water; natural resources; and other characteristics of the Earth system. Taken together, Earth observations provide the indispensable foundation for meeting the Federal Government’s long-term sustainability objectives and advancing the Nation’s

societal, environmental, and economic well-being.

As the Nation’s capacity to observe the Earth system has grown, however, so has the operating complexity of sustaining and coordinating civil Earth-observation research, operations, and related activities. To address these growing complexities, in October 2010, Congress charged the Director of OSTP with establishing a mechanism to ensure greater coordination of the research, operations, and activities relating to civil Earth observations, including the development of a triennial strategic implementation plan and a process for external independent advisory input (see the National Aeronautics and Space Authorization Act of 2010, Public Law 111–267, Section 702). In response, OSTP coordinated the first-ever Earth Observations Assessment (EOA 2012), a snapshot of the current portfolio of Earth-observing systems and surveys used to meet key Federal civil objectives across thirteen thematic Societal Benefit Areas (SBAs), and released the National Strategy for Civil Earth Observations in April 2013 (“the National Strategy”, see [http://www.whitehouse.gov/sites/default/files/microsites/ostp/nstc\\_2013\\_earthobsstrategy.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ostp/nstc_2013_earthobsstrategy.pdf)).

OSTP subsequently developed and released the first National Plan for Civil Earth Observations with support of the USGEO Subcommittee in July 2014 (“the 2014 National Plan”, see [https://www.whitehouse.gov/sites/default/files/microsites/ostp/NSTC/2014\\_national\\_plan\\_for\\_civil\\_earth\\_observations.pdf](https://www.whitehouse.gov/sites/default/files/microsites/ostp/NSTC/2014_national_plan_for_civil_earth_observations.pdf)). Based in large part on the results of EOA 2012, the 2014 National Plan established priorities and supporting actions for advancing our civil Earth-observations capabilities and ensuring stable, continuous, and coordinated Earth-observation capabilities for the benefit of society.

The 2016 Earth Observation Assessment (EOA 2016), the second iteration of the assessment process, is nearing completion. Conducted by the Assessment Working Group of the U.S. Group on Earth Observations (USGEO) Subcommittee, EOA 2016 will provide foundational input for OSTP to use when developing the second National Plan for Civil Earth Observations (“Plan”). In addition, other USGEO Subcommittee activities, including an interagency satellite needs-collection process, U.S. engagement in the intergovernmental Group on Earth Observations (GEO) and efforts to advance the discoverability, accessibility, and usability of Earth-observation data products across the

Federal Government, will inform the development of the Plan.

As EOA 2016 nears completion, OSTP has commenced the development of the Plan and is seeking public advisory input on this process through this RFI. The public input provided in response to this RFI will inform OSTP and USGEO as they work with Federal agencies and other stakeholders to develop the Plan. Following the receipt and review of responses to this RFI, OSTP also intends to host a public meeting as an additional way to collect individual, actionable feedback. This meeting will feature Federal and non-Federal participants and allow for focused discussions on specific questions related to the priorities and supporting actions outlined in the first National Plan.

**Questions To Inform Development of the National Plan**

Through this RFI, OSTP seeks responses to the following questions:

1. What services do you provide or research do you do using Federal Earth observation data and information products? Please provide specific examples.
2. What decisions do you make or support using Federal Earth observation data and information products? Please provide specific examples.
3. In the areas listed below, where has the Federal Government been the most, or least, successful and why? Please provide specific examples. You do not need to provide responses to all listed areas—please focus on those most relevant to your work.
  - a. Improving spatial and temporal resolution, sample density, and geographic coverage of measurements from Earth observation systems.
  - b. Developing and deploying new Earth observation systems that address user needs.
  - c. Improving the discoverability, accessibility, and usability of Earth observation data, model output, and derived information products.
4. One important policy goal for Federal agencies has been to improve external users’ ability to find, access, and use Earth observation data and information products. In which of these three areas (finding, accessing, or using) have you witnessed improvements, if any? Please provide specific examples.
5. In the areas listed below, what could the Federal Government do to improve the Earth observations that you rely on? Please provide specific examples. You do not need to provide responses to all listed areas—please focus on those most relevant to your work.

- a. Maintain current observing systems.
- b. Incrementally improve or upgrade current observing systems.
- c. Develop new observing systems with significantly enhanced measurement capabilities.
- d. Develop new agency practices to improve the discoverability, accessibility, and usability of Earth observation data.
6. On what emerging technologies, techniques, and management practices should the Federal Government focus attention in the next few years to enhance public services, research in the public interest, and fundamental scientific inquiry?
7. What types of partnerships with Federal agencies, such as those listed below, show the most promise to address current gaps in Earth observation coverage and related service provision? Please provide specific examples. You do not need to provide responses to all listed areas—please focus on those most relevant to your work. You are also free to discuss other types of partnerships that are not listed below.
- a. Cooperative research and development agreements.
- b. Challenges and prizes.
- c. Joint ventures for Earth observation system development and operations.
- d. Citizen science and crowdsourced observations.
8. Is your organization concerned about a potential shortage of workers in the United States who are trained to develop, understand, or use Earth observation data and geospatial information? Please provide specific concerns.
9. What, if any, do you believe were the key accomplishments of the first National Plan and what impact did the National Plan have, if any, on your organization? Please provide specific examples.
10. The first National Plan identified eight Supporting Actions (pp. 20–27) required to maximize the benefits derived from the Nation’s Earth observations. In priority order, they are:
- Action 1: Coordinate and Integrate Observations
- Action 2: Improve Data Access, Management, and Interoperability
- Action 3: Increase Efficiency and Cost Savings
- Action 4: Improve Observation Density and Sampling
- Action 5: Maintain and Support Infrastructure
- Action 6: Explore Commercial Solutions
- Action 7: Maintain and Strengthen International Collaboration

#### Action 8: Engage in Stakeholder-Driven Data Innovation

Of the actions listed above most relevant to your work, where has the Federal Government been the most, or least, successful, and why? Please provide specific examples.

**Ted Wackler,**

*Deputy Chief of Staff and Assistant Director.*

[FR Doc. 2016–13010 Filed 6–1–16; 8:45 am]

**BILLING CODE 3270–F6–P**

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32139]

### Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

May 27, 2016.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of May 2016. A copy of each application may be obtained via the Commission’s Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC’s Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 21, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

**FOR FURTHER INFORMATION CONTACT:** Jessica Shin, Attorney-Adviser, at (202) 551–5921 or Chief Counsel’s Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel’s Office, 100 F Street NE., Washington, DC 20549–8010.

### John Hancock Diversified Income Fund [811–21367]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Dates:* The application was filed on December 29, 2015, and amended on May 3, 2016 and May 13, 2016.

*Applicant’s Address:* 601 Congress Street, Boston, Massachusetts 02210.

### Morgan Stanley Global Infrastructure Fund [811–05415]

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has transferred its assets to Global Infrastructure Portfolio, a series of Morgan Stanley Institutional Fund, Inc. and, on March 30, 2015, made a final distribution to its shareholders based on net asset value. Expenses of \$135,481 incurred in connection with the reorganization were paid by applicant’s investment adviser.

*Filing Date:* The application was filed on May 4, 2016.

*Applicant’s Address:* 522 Fifth Avenue, New York, New York 10036.

### O’Connor EQUUS [File No. 811–22937]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 4, 2016, applicant made a liquidating distribution to shareholders, based on net asset value. Expenses incurred in connection with the liquidation were paid by UBS O’Connor LLC, applicant’s investment adviser.

*Filing Date:* The application was filed on April 25, 2016.

*Applicant’s Address:* One Freedom Valley Drive, Oaks, Pennsylvania 19456.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–13043 Filed 6–1–16; 8:45 am]

**BILLING CODE 8011–01–P**



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77943; File No. SR-ICEEU-2016-004]

### Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Amendment No. 1 and Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Additions to Permitted Cover

May 27, 2016.

#### I. Introduction

On February 10, 2016, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to additions to Permitted Cover. The proposed rule change was published for comment in the **Federal Register** on March 2, 2016.<sup>3</sup> The Commission did not receive comments on the proposed rule change. On April 15, 2016, the Commission extended the time period in which to either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change to May 31, 2016.<sup>4</sup> On May 13, 2016, ICEEU filed Amendment No. 1 to the proposal.<sup>5</sup> For the reasons discussed below, the Commission is approving the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposed Rule Change

The purpose of the proposed rule change is to permit Clearing Members of ICE Clear Europe to provide additional

categories of securities, including treasury bills and floating and inflation-linked government bonds (the “Additional Permitted Cover”) to ICE Clear Europe to satisfy certain margin and guaranty fund requirements.

Specifically, the Additional Permitted Cover will include the following types of government securities: (i) U.S. Treasury floating-rate notes (“UST FRNs”), (ii) Canadian government treasury bills and Canadian government real return bonds, (iii) Spanish government treasury bills (*Letras del Tesoro*), (iv) Swedish government treasury bills, (v) German government inflation-linked bonds (of two types: *Deutsche Bundesrepublik Inflation-Linked Bonds* and *Bundesobligationen I/L*), (vi) Japanese government CPI-linked bonds, and (vii) Swedish government inflation index-linked bonds.

ICE Clear Europe represents that it believes that the Additional Permitted Cover is of minimal credit risk, comparable to that of other sovereign debt currently accepted by ICE Clear Europe as Permitted Cover. ICE Clear Europe also represents that other debt obligations of the same governments that issue the Additional Permitted Cover are currently eligible as Permitted Cover. According to ICE Clear Europe, the Additional Permitted Cover consisting of treasury bills is substantially similar to existing forms of treasury bill Permitted Cover currently accepted by the Clearing House. In terms of the Additional Permitted Cover consisting of inflation-linked government bonds, ICE Clear Europe represents that it currently accepts similar bonds issued by other governments. As a result, ICE Clear Europe does not believe that such bonds would pose any additional or novel risks for the Clearing House. ICE Clear Europe further believes that the Additional Permitted Cover has demonstrated low volatility, including in stressed market conditions.

ICE Clear Europe represents that it will initially apply to the Additional Permitted Cover the same valuation haircuts as currently applied to currently accepted bonds of the same issuer and within the same maturity bucket. ICE Clear Europe also asserts that it will review and modify such haircuts from time to time, in accordance with Clearing House’s Collateral and Haircut Policy and will impose both absolute limits and relative limits for each type of Additional Permitted Cover (other than U.S. Treasury obligations), consistent with the existing issuer limits for Permitted Cover and the Collateral and Haircut

Policy. As part of that policy, ICE Clear Europe asserts that an additional haircut will apply where Additional Permitted Cover is used to cover a margin requirement denominated in a different currency, to cover the exchange rate risk.

ICE Clear Europe represents that it will accept the Additional Permitted Cover in respect of original margin requirements for F&O Contracts and initial margin requirements for CDS Contracts. In addition, ICE Clear Europe represents that the UST FRNs will be accepted as Permitted Cover in respect of F&O and CDS guaranty fund contribution requirements and the Spanish and German securities constituting Additional Permitted Cover will also be accepted for the Euro-denominated component of the CDS guaranty fund. According to ICE Clear Europe, the other types of Additional Permitted Cover will not be accepted in respect of guaranty fund requirements and the Additional Permitted Cover cannot be used to satisfy variation margin requirements because variation margin must be paid in cash in the currency of the contract.

#### III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act<sup>6</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act<sup>7</sup> requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>8</sup> and the rules and regulations thereunder applicable to ICE Clear Europe. The proposed rule change will permit Clearing Members of ICE Clear Europe to provide additional categories of securities to satisfy certain margin and guaranty fund requirements. The

<sup>6</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 34-77234 (February 25, 2016), 81 FR 10949 (Mar. 2, 2016).

<sup>4</sup> Securities Exchange Act Release No. 34-77634 (April 15, 2016), 81 FR 23531 (April 21, 2016).

<sup>5</sup> ICE Clear Europe filed Amendment No. 1 to clarify in its List of Permitted Cover that the operation of the relative limits applicable to certain Permitted Cover apply across an individual Clearing Member’s total initial margin and guaranty fund requirement, as described in ICE Clear Europe’s Collateral and Haircut Policy. The List of Permitted Cover incorrectly described the relative limit as applying only to the initial margin requirement. The amendment is intended to ensure that the description of relative limits in the List of Permitted Cover is consistent with the approach set forth in ICE Clear Europe’s Collateral and Haircut Policy, but does not substantively change any policies or procedures. Amendment No. 1 is not subject to comment because it is a technical amendment that does not alter the substance of the proposed rule change or raise any novel regulatory issues.

Additional Permitted Cover is substantially similar to existing forms of Permitted Cover, will be subject to the same valuation haircuts as currently applied to currently accepted bonds of the same issuer and within the same maturity bucket, and will be subject to both absolute limits and relative limits, consistent with the existing issuer limits for Permitted Cover and the Collateral and Haircut Policy. The Commission believes that the proposed rule change is intended to allow Clearing Members more flexibility in meeting their margin and guaranty fund requirements without compromising ICE Clear Europe's risk management function.

The Commission therefore finds that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>9</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-ICEEU-2016-004) as amended by Amendment No. 1, be, and hereby is, approved.<sup>11</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-13042 Filed 6-1-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77938; File No. SR-OCC-2016-007]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Related to The Options Clearing Corporation's Membership Approval Process

May 27, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 16, 2016, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. 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 purpose of this proposed rule change is to: (i) Vest the authority to approve or disapprove new membership applications with OCC's Risk Committee,<sup>3</sup> and (ii) delegate authority to the Executive Chairman or President of OCC to approve new membership applications provided that: (a) It is not recommended that the Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of Article V of OCC's By-Laws, and (b) the Risk Committee is given not less than five business days to determine that the application should be reviewed at a meeting of the Risk Committee and the Risk Committee has not requested that the application be reviewed at a meeting of the Risk Committee within such five day period.

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### (1) Purpose

The purpose of this proposed rule change is to streamline OCC's membership approval process by: (i) Allowing OCC's Executive Chairman or President to approve pro forma applications for clearing membership, and (ii) to vest ultimate authority with OCC's Risk Committee, not its Board, to approve or disapprove applications for clearing membership that are not approved by either OCC's Executive Chairman or President. To this end, OCC is proposing to: (i) Vest the authority to approve or disapprove new membership applications with OCC's Risk Committee, and (ii) delegate authority to the Executive Chairman or President of OCC to approve new membership applications provided that: (a) It is not recommended by the Risk Committee's designated delegates or agents that the Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of Article V of OCC's By-Laws, and (b) the Risk Committee is given not less than five business days to determine that the application should be reviewed at a meeting of the Risk Committee and the Risk Committee has not requested that the application be reviewed at a meeting of the Risk Committee within such five day period. The practical effect of the proposed rule change is that either OCC's Executive Chairman or President would be approving most applications for clearing membership at OCC since most applicants for clearing membership choose to have their application presented for approval only when such approval is pro forma in nature (*i.e.*, the applicant meets all of the clearing membership requirements at OCC and there is no need to impose additional membership requirements). OCC believes that the proposed rule change would better allocate the time and resources of the Board and Risk Committee and ensure applications for clearing membership are considered in a timely manner.

##### Background

OCC believes that its membership criteria are objective standards that are designed not to unfairly discriminate in

<sup>9</sup> 15 U.S.C. 78q-1.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> OCC's Risk Committee is a committee of OCC's Board of Directors. See OCC's By-Laws Article III, Section 9.

the admission of participants to OCC,<sup>4</sup> as well as to provide for fair and open access to OCC.<sup>5</sup> Currently, the authority to approve or disapprove new applications for clearing membership resides with the Board.<sup>6</sup> Under Article V, Section 2 of OCC's By-Laws, OCC's Risk Committee, including its designated delegates or agents, is responsible for reviewing applications for clearing membership, and the Risk Committee is responsible for making a recommendation of approval or disapproval to the Board (in part, relying on OCC's Management's review and recommendation).<sup>7</sup> OCC's management ("Management") performs the substantive review of applications for clearing membership on behalf of the Risk Committee. Management reviews a given application against OCC's membership criteria, which are set forth in Article V of OCC's By-Laws as well as Chapters 2 and 3 of OCC's Rules. Based on its review, Management, as the subject matter expert on OCC's membership criteria, either recommends an application for approval without conditions, recommends an application for approval with conditions (in accordance with OCC's By-Laws, Article V, Section 1, Interpretation and Policy .06), or does not recommend an application for approval. The Risk Committee, based on Management's review of the application, recommends a course of action to OCC's Board. OCC's Board then approves or disapproves applications for clearing membership based on the Risk Committee's recommendation.

Moreover, since the rules of the Commission and the Commodity Futures Trading Commission require OCC to have rules that do not unfairly discriminate in the admission of participants and provide fair and open access,<sup>8</sup> OCC believes that, under its rules, it is required to admit applicants for clearing membership that clearly meet OCC's membership criteria, and therefore, the Board's ultimate approval of an application for clearing membership for which Management does not recommend approval with conditions or disapproval is pro forma. From a timing perspective, applications

for clearing membership often do not track the Risk Committee or Board's regular meeting schedule and, on occasion, the Board has had to convene a special meeting for the sole purpose of considering an application for clearing membership or otherwise seek [sic] approval via unanimous written consent, which is an inefficient use of the Board's time and resources. In an effort to better allocate the time and resources of OCC's Board and Risk Committee as well as streamline its clearing membership approval process, OCC is proposing the amendments to Articles V and VIII of its By-Laws as well as the Board and Risk Committee Charters described below. The effect of such amendments is that either OCC's Executive Chairman or President would approve most applications for clearing membership, thereby allowing the Board and the Risk Committee to better allocate their time and resources.

#### Changes To Vest Authority of New Applicant Approvals With the Risk Committee

OCC is proposing to amend Article V, Section 2 of its By-Laws to vest the authority to approve or disapprove new applicants for clearing membership with the Risk Committee. OCC believes that the members of the Board comprising the Risk Committee are capable of appropriately acting on membership applications. The Risk Committee is currently delegated the authority to (1) review applications for clearing membership and recommend approval or disapproval thereof to the Board, (2) conduct hearings if requested by applicants whose applications are proposed to be disapproved, and (3) review and approve or disapprove requests by clearing members to expand clearing activities.<sup>9</sup> Therefore, OCC believes that requiring the Board to approve or disapprove an application for clearing membership that has already been reviewed by, and received a recommendation for approval or disapproval from, the Risk Committee is redundant and represents an inefficient use of the Board's time. Accordingly, OCC believes that the Risk Committee is the appropriate governing body in which to vest ultimate authority to approve or disapprove applications for clearing membership.<sup>10</sup> Should the Risk

Committee propose to disapprove an application for clearing membership, the Risk Committee must first provide the applicant an opportunity to be heard and present evidence on its own behalf (as is currently the case today with respect to the Board's decision to disapprove an application for clearing membership).<sup>11</sup>

In order to effect the foregoing, and in addition to proposed changes to Article V, Section 2 of the By-Laws, OCC is proposing conforming changes to Article V, Sections 1 and 3 of the By-Laws as well as the Board and Risk Committee Charters.<sup>12</sup> Such conforming changes would identify that the Risk Committee, and not the Board, would approve applications for clearing membership. Additionally, OCC is proposing changes to Article VIII, Section 2 of the By-Laws (as well as the Board and Risk Committee Charters) to identify that the Risk Committee, and not the Board, would set initial clearing fund requirements in connection with the approval of an application for clearing membership.

#### Delegation of Authority To Approve Applications for Membership to the Executive Chairman or President of OCC

In order to better streamline OCC's membership application approval process, and allow the Board and the Risk Committee to more efficiently allocate their time, OCC is proposing additional amendments to Article V, Section 2 of its By-Laws to allow OCC's Executive Chairman or its President to approve certain applications for clearing membership. As described above: (i) OCC believes that, based on the applicable rules of the Commission and the Commodity Futures Trading Commission, applications for clearing membership that clearly meet OCC's membership criteria must be approved,<sup>13</sup> and (ii) applications for clearing members do not necessarily track the Risk Committee or Board's regular meeting schedule and, on occasion, the Board has had to convene in a special meeting for the sole purpose of considering a clearing member

applications for clearing membership pursuant to proposed Article V, Section 2(c) of the By-Laws.

<sup>11</sup> See OCC's By-Laws Article V, Section 2. Typically, however, if OCC's due diligence review reveals issues that would prevent the Board or the Risk Committee from approving an application for clearing membership, the applicant voluntarily remediates such issues prior to the presentation of the application for clearing membership to the Risk Committee.

<sup>12</sup> Marked versions of the Board and Risk Committee Charters are attached as Exhibits 5A and 5B.

<sup>13</sup> See 15 U.S.C. 78q-1(b)(3)(F) and 7 U.S.C. 7a-1(c)(2)(C).

<sup>4</sup> See 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> See 7 U.S.C. 7a-1(c)(2)(C)(iii)(III).

<sup>6</sup> See OCC's By-Laws Article V, Section 2.

<sup>7</sup> See OCC's By-Laws Article V, Section 2. The Risk Committee, from a practical perspective, has designated OCC's management as its agent to review applications for clearing membership. OCC's management reviews applications for clearing membership and makes a recommendation to the Risk Committee concerning the applicant's satisfaction of OCC's membership criteria.

<sup>8</sup> See 15 U.S.C. 78q-1(b)(3)(F) and 7 U.S.C. 7a-1(c)(2)(C).

<sup>9</sup> See Section IV of the Risk Committee Charter attached hereto as Exhibit 5B.

<sup>10</sup> The Board would continue to oversee OCC's membership criteria and ongoing membership standards through its authority to approve changes to OCC's By-Laws and Rules (and specifically those By-Laws and Rules that concern membership). The Risk Committee would inform the Board, at the Board's next regularly scheduled meeting, of

application or otherwise seek approval via unanimous written consent, which is not a good use of either the Board or the Risk Committee's time and resources. Therefore, OCC is proposing to amend Article V, Section 2 of its By-Laws to delegate the authority to approve applications for clearing membership to the Executive Chairman or President of OCC provided that: (i) It is not recommended that the Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of Article V of OCC's By-Laws, and (ii) the Risk Committee is given not less than five business days from the date it is notified by its designated delegates or agents that the Executive Chairman or President intends to approve a given application to determine that such application should be reviewed at a meeting of the Risk Committee and the Risk Committee has not requested that the application be reviewed at a meeting of the Risk Committee within such five day period. If five business days pass and no member of the Risk Committee notifies Management that a given application for clearing membership should be reviewed at a meeting of the Risk Committee, then the Executive Chairman and President shall have the authority to approve the application for clearing membership. This proposed change would have the effect of allowing either OCC's Executive Chairman or the President to approve most applications for clearing membership received by OCC. Neither the Executive Chairman nor the President would be allowed to disapprove an application for clearing membership. Instead, if either the Executive Chairman or President determined he could not approve an application for clearing membership, the application would be considered by the Risk Committee for approval or disapproval at its next regularly scheduled meeting. OCC believes that allowing the Executive Chairman or President to approve applications for clearing membership that clearly meet OCC's membership criteria would allow the Board and the Risk Committee to allocate their time to more efficiently and effectively.

#### (2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F)<sup>14</sup> of the Act because it is designed to remove impediments to a national system for the prompt and accurate clearance and settlement of

securities transactions by streamlining OCC's membership approval process. By vesting the authority to approve or disapprove applications for clearing membership with the Risk Committee and by delegating authority to the Executive Chairman or the President to approve new applications provided that: (i) It is not recommended that the Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of Article V of OCC's By-Laws, and (ii) the Risk Committee is given not less than five business days to determine that the application should be reviewed at a meeting of the Risk Committee and the Risk Committee has not requested that the application be reviewed at a meeting of the Risk Committee within such five day period, OCC will not subject applicants for clearing membership to the regular meeting cycle of the Board or the Risk Committee, particularly when the approval of an application for clearing membership is pro forma in nature. Additionally, by streamlining OCC's membership approval process in this manner, OCC's Board and Risk Committee will be able to deploy their time and resources in a more efficient manner and allow the Board and Risk Committee more time to focus on other matters of significance to OCC and its role as a systemically important financial market utility. As a result, OCC believes the proposed rule change is also reasonably designed to provide for governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>15</sup> applicable to clearing agencies and support the objectives of owners and participants in accordance with Rule 17Ad-22(d)(8).<sup>16</sup> The proposed rule change is not inconsistent with any rules of OCC, including those rules proposed to be amended.

#### (B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impact or impose a burden on competition.<sup>17</sup> OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because it would apply equally to all potential users of OCC, and would not impact current users of OCC. For the foregoing reasons, OCC does not believe that the proposed rule change would have any

impact or impose a burden on competition.

#### (C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2016-007 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2016-007. 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

<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>15</sup> 15 U.S.C. 78q-1.

<sup>16</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(I).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at [http://www.theocc.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_16\\_007.pdf](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_007.pdf).

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2016-007 and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2016-13039 Filed 6-1-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77931; File No. SR-ISEMercury-2016-07]

### Self-Regulatory Organizations; ISE Mercury, LLC; Order Approving Proposed Rule Change Related to Market Wide Risk Protection

May 26, 2016.

#### I. Introduction

On March 29, 2016, ISE Mercury, LLC (the "Exchange" or "ISE Mercury") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to introduce new activity-based risk protection functionality. The proposed rule change was published for comment in the **Federal Register** on April 14, 2016.<sup>3</sup> No substantive comment letters were received in

response to this proposal.<sup>4</sup> This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposed to introduce two activity-based risk protection measures that will be mandatory for all members: (1) The "Order Entry Rate Protection," which prevents members from *entering* orders at a rate that exceeds predefined thresholds,<sup>5</sup> and (2) the "Order Execution Rate Protection," which prevents members from *executing* orders at a rate that exceeds their predefined risk settings (together, "Market Wide Risk Protection"). The Exchange will announce the implementation date of the proposed rule in a circular to be distributed to members prior to implementation.<sup>6</sup>

Pursuant to proposed Rule 714(d), "Market Wide Risk Protection," the Exchange's trading system (the "System") will maintain one or more counting programs on behalf of each member that will track the number of orders entered and the number of contracts traded on ISE Mercury.<sup>7</sup> Members may also use multiple counting programs to separate risk protections for different groups established within the member.<sup>8</sup> The counting programs will maintain separate counts, over rolling time periods specified by the member, for each count of: (1) The total number of orders entered; and (2) the total number of contracts traded.<sup>9</sup>

<sup>4</sup> The Commission received one anonymous comment letter that read "[g]ood." See Letter from Anonymous, dated May 3, 2016.

<sup>5</sup> The Exchange stated that it will initiate the Order Entry Rate Protection pre-open, but in a manner that allows members time to load their orders without inadvertently triggering the protection. The Exchange further noted that it will establish and communicate the precise initiation time via circular and prior to implementation. See Notice, *supra* note 3, at 22141 n.4.

<sup>6</sup> See Notice, *supra* note 3, at 22141.

<sup>7</sup> Unlike similar risk protection measures available on ISE Mercury's affiliated exchanges, the Market Wide Risk Protection functionality for ISE Mercury will not apply cross-market to its affiliated exchanges. *Cf., e.g.,* Securities Exchange Act Release Nos. 77489 (Mar. 31, 2016), 81 FR 20004 (Apr. 6, 2016) (SR-ISE-2016-08) (notice describing International Securities Exchange, LLC's Market Wide Risk Protection functionality); and 77488 (Mar. 31, 2016), 81 FR 20021 (Apr. 6, 2016) (SR-ISEGemini-2016-03) (notice describing ISE Gemini, LLC's Market Wide Risk Protection functionality). See also Notice, *supra* note 3, at 22141 n.6.

<sup>8</sup> The Exchange stated that it will explain how members can go about setting up risk protections for different groups (*e.g.,* business units) in a circular issued to members. See Notice, *supra* note 3, at 22141 n.7.

<sup>9</sup> See proposed Rule 714(d). The Exchange clarified that a member's allowable order rate for the Order Entry Rate Protection will be comprised of parameter (1), while the allowable contract execution rate for the Order Execution Rate

According to the Exchange, members will have the discretion to establish the applicable time period for each of the counts maintained under the Market Wide Risk Protection, provided that the selected period is within minimum and maximum time parameters that will be established by the Exchange and announced via circular.<sup>10</sup> By contrast, the Exchange's proposal does not establish minimum or maximum values for the order entry or execution parameters described in (1) and (2) above. Nevertheless, the Exchange will establish default values<sup>11</sup> for the time period, order entry, and contracts traded parameters in a circular to be distributed to members. The Exchange represented that such default values will apply only to members that do not submit their own parameters for the Market Wide Risk Protection measures.<sup>12</sup>

Under proposed Rule 714(d), the System will trigger the Market Wide Risk Protection when it determines that the member has either (1) entered a number of orders exceeding its designated allowable order rate for the specified time period, or (2) executed a number of contracts exceeding its designated allowable contract execution rate for the specified time period.<sup>13</sup> If the member's thresholds have been exceeded, the Market Wide Risk Protection will be triggered and the System will automatically reject all subsequent incoming orders entered by the member on ISE Mercury. In addition, if the member has opted in to this functionality, the System will automatically cancel all of the member's existing orders.<sup>14</sup> The Market Wide Risk Protection will remain engaged until the member manually (*e.g.,* via email)

Protection will be comprised of parameter (2). The Exchange further explained that contracts executed on the agency and contra-side of a two-sided crossing order will be counted separately for the Order Execution Rate Protection. See Notice, *supra* note 3, at 22141.

<sup>10</sup> See Notice, *supra* note 3, at 22141. The Exchange stated that it anticipated setting these minimum and maximum time parameters at one second and a full trading day, respectively. See *id.* at n.9.

<sup>11</sup> See proposed Rule 714(d); see also Notice, *supra* note 3, at 22141.

<sup>12</sup> See Notice, *supra* note 3, at 22141.

<sup>13</sup> *Id.*; see also proposed Rule 714(d)(1). Specifically, after a member enters or executes an order, the System will look back over the specified time period to determine whether the member has exceeded the relevant thresholds. See Notice, *supra* note 3, at 22141. In the Notice, the Exchange provided examples illustrating how the Market Wide Risk Protection functionality would work both for order entry and order execution protections. See Notice, *supra* note 3, at 22141-42.

<sup>14</sup> Proposed Rule 714(d)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 77569 (April 8, 2016), 81 FR 22140 ("Notice").

notifies the Exchange to enable the acceptance of new orders.<sup>15</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>16</sup> and rules and regulations thereunder applicable to a national securities exchange.<sup>17</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>18</sup>

The Commission believes that the Exchange's proposed activity-based order protections will provide an additional tool to members to assist them in managing their risk exposure.<sup>19</sup> Specifically, the Commission believes that the Market Wide Risk Protection functionality may help members to mitigate the potential risks associated with entering and/or executing a level of orders that exceeds their risk management thresholds that may result from, for example, technology issues with electronic trading systems. Further, the Commission notes that other exchanges have established risk protection mechanisms for members and market makers that are similar in many respects to ISE Mercury's proposal.<sup>20</sup>

Proposed Rule 714(d) imposes a mandatory obligation on ISE Mercury members to utilize the Market Wide Risk Protection functionality. The Commission notes that, although the Exchange will establish minimum and maximum permissible parameters for

the time period values, members will have discretion to set the threshold values for the order entry and order execution parameters.<sup>21</sup> If members do not independently set such parameters, they will be subject to the default parameters established by ISE Mercury.<sup>22</sup> While the Commission believes that the Exchange's proposed rule provides members flexibility to tailor the Market Wide Risk Protection to their respective risk management needs, the Commission reminds members to be mindful of their obligations to, among other things, seek best execution of orders they handle on an agency basis and consider their best execution obligations when establishing parameters for the Market Wide Risk Protection or utilizing the default parameters set by ISE Mercury.<sup>23</sup> For example, an abnormally low order entry parameter, set over an abnormally long specified time period should be carefully scrutinized, particularly if a member's order flow to ISE Mercury contains agency orders. To the extent that a member chooses sensitive parameters, a member should consider the effect of its chosen settings on its ability to receive a timely execution on marketable agency orders that it sends to ISE Mercury in various market conditions. The Commission cautions brokers considering their best execution obligations to be aware that the agency orders they represent may be rejected as a result of the Market Wide Risk Protection functionality.

As discussed above, ISE Mercury determined not to establish minimum and maximum permissible settings for the order entry and order execution parameters in its rule and indicated its intent to set a minimum and maximum for the time period parameters that provide broad discretion to members (*i.e.*, one second and a full trading day, respectively).<sup>24</sup> In light of these broad limits, the Commission expects ISE Mercury to periodically assess whether the Market Wide Risk Protection measures are operating in a manner that is consistent with the promotion of fair

and orderly markets, including whether the default values and minimum and maximum permissible parameters for the applicable time period established by ISE Mercury continue to be appropriate and operate in a manner consistent with the Act and the rules thereunder.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule change (SR-ISEMercury-2016-07) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-12890 Filed 6-1-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77929; File No. SR-NYSE-2016-36]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List

May 26, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 11, 2016, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List for equity transactions in stocks with a per share stock price more than \$1.00 to: (1) Add a new fee for verbal executions by Floor brokers at the close; (2) revise the fees for Midpoint Passive Liquidity ("MPL") orders that remove liquidity from the Exchange and that are not designated with a "retail"

<sup>15</sup> Proposed Rule 714(d)(3). Members who have not opted to cancel all existing orders under proposed Rule 714(d)(2), however, will still be able to interact with their existing orders entered before the Market Wide Risk Protection was triggered. For instance, such members may send cancel order messages and/or receive trade executions for those orders. *Id.*; see also Notice, *supra* note 3, at 22141.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> The Exchange currently provides members with limit order price protections that reject orders priced too far outside of the Exchange's best bid or offer. See ISE Mercury Rule 714(b)(2).

<sup>20</sup> See, e.g., Miami International Securities Exchange, LLC Rule 519A ("Risk Protection Monitor"); BATS BZX Exchange, Inc. Rule 21.16 ("Risk Monitor Mechanism").

<sup>21</sup> The Exchange has represented that it anticipates that the minimum and maximum values for the applicable time period will be initially set at one second and a full trading day, respectively, which the Commission believes gives members wide latitude in establishing the applicable time periods. See Notice, *supra* note 3, at 22141 n.9.

<sup>22</sup> Proposed Rule 714(d).

<sup>23</sup> See Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290, at 48323 (Sept. 12, 1996) (Order Execution Obligations adopting release); see also Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37537-8 (June 29, 2005) (Regulation NMS adopting release).

<sup>24</sup> See Notice, *supra* note 3, at 22141 n.9; see also *supra* note 21.

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

modifier as defined in Rule 13; (3) revise the requirements and credits for MPL orders that provide liquidity to the Exchange; and (4) make certain changes in the footnotes and tiers applicable to Supplemental Liquidity Providers (“SLPs”) on the Exchange. The Exchange proposes to implement these changes to its Price List effective May 11, 2016.<sup>4</sup> The proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

## II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend its Price List to: (1) Add a new fee for verbal interest by Floor brokers at the close; (2) revise the fees for MPL orders that remove liquidity from the Exchange and that are not designated with a “retail” modifier as defined in Rule 13; (3) revise the requirements and credits for MPL orders that provide liquidity to the Exchange; and (4) make certain changes in the footnotes and tiers applicable to SLPs.

The proposed changes would only apply to credits in transactions in securities priced \$1.00 or more.

The Exchange proposes to implement these changes effective May 11, 2016.

#### Verbal Interest at the Close

Currently, the Exchange does not charge a fee for verbal executions by Floor brokers at the close.<sup>5</sup> The

Exchange proposes a fee of \$0.0010 per share for verbal executions by Floor brokers at the close. The Exchange notes that the proposed fee is the same as the current fee (charged to both sides) for MOC and LOC orders (the Non-Tier MOC/LOC fee).<sup>6</sup>

The Exchange would also add the phrase “excluding verbal interest” to clarify that verbal interest at the close would not be counted for purposes of Floor Broker executions swept into the close that are subject to a charge of \$0.00035 per share for shares executed in excess of an ADV<sup>7</sup> of 750,000 shares.

#### MPL Orders

An MPL Order is defined in Rule 13 as an undisplayed limit order that automatically executes at the mid-point of the best protected bid (“PBB”) or [sic] best protected offer (“PBO”), as such terms are defined in Regulation NMS Rule 600(b)(57) (together, “PBBO”).<sup>8</sup>

#### MPL Orders That Remove Liquidity

The Exchange currently charges a fee of \$0.00275 per share per transaction for MPL Orders that remove liquidity from the NYSE and that are not designated with a “retail” modifier as defined in Rule 13.<sup>9</sup> Floor brokers are currently charged the same price for MPL Orders that remove liquidity from the Exchange. The Exchange proposes to revise the fee for all MPL Orders that remove liquidity from the Exchange and that are not designated with a “retail” modifier as defined in Rule 13, including MPL Orders entered by Floor brokers, from \$0.00275 to \$0.0030. The Exchange will continue not to charge a fee for MPL Orders that remove liquidity from the Exchange and that are designated with a “retail” modifier as defined in Rule 13.

#### MPL Orders That Add Liquidity

The Exchange currently provides a credit of \$0.0030 per share credit for MPL Orders that provide liquidity from a member organization that has Adding

MOC and LOC orders) and Floor broker orders swept into the close, are charged \$0.00035 per share per transaction (charged to both sides). Such executions are not charged if the member organization executes an ADV on the Exchange during the billing month of fewer than 750,000 shares ADV.

<sup>6</sup> See note 5, *supra*.

<sup>7</sup> The defined term, “ADV,” is used here as defined in footnote 2 to the Price List.

<sup>8</sup> See Rule 14. See also 17 CFR 242.600(b)(57).

<sup>9</sup> MPL Orders that take liquidity do not count toward a member’s or member organization’s overall level of providing volume for purposes of other pricing on the Exchange that is based on such levels (e.g., the Tier 1, Tier 2 and Tier 3 Adding Credits).

ADV<sup>10</sup> in MPL Orders that is at least 1.5 million shares, excluding any liquidity added by a Designated Market Maker (“DMM”). The Exchange provides a \$0.0015 per share transaction credit for MPL Orders that provide liquidity from a member organization that does not meet the Adding ADV threshold.

The Exchange proposes that member organizations qualifying for the \$0.0030 credit have an Adding ADV in MPL orders of at least 0.04% of NYSE consolidated ADV (“CADV”),<sup>11</sup> excluding liquidity added by a DMM. The Exchange also proposes to reduce the credit from \$0.0030 to \$0.00275.

#### Changes to Footnotes and Tiers Applicable to SLPs

Current footnote 8 applies to SLP Tiers 1, 1A, 2 and 3 and provides that in its first calendar month as an SLP, an SLP qualifies for the relevant credit regardless of whether it meets the requirement to provide liquidity with an ADV of more than the applicable threshold percentage of NYSE CADV in the applicable month. The Exchange proposes to delete footnote 8 and move the text of the footnote into the body of the Price List for SLP Tier 3, where an SLP is eligible for a credit of \$0.0023 per share traded if the SLP (1) meets the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, and (2) adds liquidity for assigned SLP securities in the aggregate of an ADV of more than 0.20% of NYSE CADV or, with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a),<sup>12</sup> more than the current 0.20% requirement after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month. The Exchange does not propose to move the text of current footnote 8 into the body of the Price List for SLP Tier 2, SLP Tier 1 or SLP Tier 1A. Current footnote 8 would thus no longer apply to those tiers.

The Exchange also proposes that current footnote \*\* would become new footnote 8. Accordingly, each reference in the Price List to footnote \*\* would be replaced with a reference to footnote 8. The substance of footnote \*\* would remain unchanged. The Exchange

<sup>10</sup> “Adding ADV” is when a member organization has ADV that adds liquidity to the Exchange during the billing month. Adding ADV excludes any liquidity added by a Designated Market Maker.

<sup>11</sup> NYSE CADV is defined in the Price List as the consolidated average daily volume of NYSE-listed securities.

<sup>12</sup> Rule 107B(i)(2)(A) prohibits a DMM from acting as a SLP in the same securities in which it is a DMM.

<sup>4</sup> The Exchange originally filed to amend the Fee Schedule on May 2, 2016 (SR-NYSE-2016-32) and withdrew such filing on May 11, 2016.

<sup>5</sup> The Exchange charges member organizations a fee for market at-the-close (“MOC”) and limit at-the-close (“LOC”) orders at the close and for Floor broker executions swept into the close. Member organizations that execute during the billing month average daily volume (“ADV”) in excess of 750,000 shares through orders executed at the close (except



believes that this change will add greater specificity and clarity to the Exchange's Price List.

\* \* \* \* \*

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>14</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

### Verbal Interest at the Close

The Exchange believes that charging a fee for verbal executions at the close is reasonable. The Exchange's closing auction is a recognized industry benchmark,<sup>15</sup> and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange's closing price on a daily basis. The proposed fee is also reasonable, equitable and not unfairly discriminatory because it would be the same as the current fee (charged to both sides) for MOC and LOC orders (the Non-Tier MOC/LOC fee). Further, the proposed fee change is also equitable and not unfairly discriminatory because it will apply uniformly to all Floor brokers, who are the only market participants that can enter verbal interest at the close.

### MPL Orders

The Exchange believes that (1) increasing the fee for MPL Orders that remove liquidity from the Exchange and that are not designated as "retail," and (2) requiring Adding ADV in MPL orders of at least 0.04% of NYSE CADV rather than a fixed share number and offering a credit of \$0.00275 for MPL Orders that add liquidity to the NYSE is reasonable. MPL Orders provide opportunities for market participants to interact with orders priced at the midpoint of the PBBO, thus providing price improving liquidity to market

participants and increasing the quality of order execution on the Exchange's market, which benefits all market participants.

The new credit is also reasonable because it would be similar or higher than the rates on the NASDAQ Stock Market, LLC ("NASDAQ"). For example, on NASDAQ, firms that average 1 million or more shares of midpoint liquidity receive a credit of \$0.0010 per share in Tape C securities and \$0.0018 in Tape A and B securities to execute against resting midpoint liquidity, which is lower than the proposed \$0.00275 per share rate for MPL orders that is at least 0.04% of NYSE CADV, excluding any liquidity added by a DMM.<sup>16</sup>

The proposed change is equitable and not unfairly discriminatory because MPL Orders increase the quality of order execution on the Exchange's market, which benefits all market participants. The Exchange also believes that the proposed changes are equitable and not unfairly discriminatory because all market participants—customers, Floor brokers, DMMs, and SLPs—may use MPL Orders on the Exchange and because all market participants that use MPL Orders may receive credits for MPL Orders, as is currently the case.

### Changes to Footnotes Applicable to SLPs

The Exchange believes it is reasonable to (1) eliminate current footnote 8 and the related Tier 1, Tier 1A, and Tier 2 credits for SLPs during their first calendar month as a SLP irrespective of whether the SLP meets the requirement to provide liquidity with an ADV of more than the applicable threshold percentage of NYSE CADV, and (2) retain the Tier 3 credit for SLPs during their first calendar month irrespective of whether the the [sic] SLP meets the requirement to provide liquidity with an ADV of more than the applicable threshold percentage of NYSE CADV by moving the text of current footnote 8 to the body of the Price List in Tier 3. The Exchange believes that eliminating the higher tiers during a SLP's first calendar month without regard to the applicable requirement is reasonable because SLPs have not increased their activity to qualify for these tiers as significantly as the Exchange anticipated that they would. The Exchange notes that new SLPs can still qualify for the higher rates during their first calendar month of operation as a SLP by meeting the applicable tier volume requirements.

The Exchange also believes that retaining the \$0.0023 credit for SLP Tier 3 for SLPs in their first calendar month as an SLP is reasonable because the \$0.0023 credit is equal to or higher than the applicable non-Tier Adding Credit, Tier 3 Adding Credit, Tier 2 Adding Credit or Tier 1 Adding Credit for SLPs that don't meet the requirements of SLP Tier 3. The Exchange believes that the proposed changes are equitable and not unfairly discriminatory because they would apply uniformly to all SLPs during their first calendar month. The Exchange notes that there are currently no SLPs in the first calendar month of operation.

Further, the Exchange believes that the proposed change to its Price List whereby current footnote \*\* would become new footnote 8 is reasonable because it is designed to provide greater specificity and clarity to the Price List, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

### B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>17</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. Further, the Exchange believes that the proposed non-substantive change relating to footnote \*\* applicable to SLPs would not affect intermarket nor intramarket competition because the proposed change is not designed to amend any fee or rebate or alter the manner in which

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4) & (5).

<sup>15</sup> For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

<sup>16</sup> See NASDAQ Price List, available at <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

<sup>17</sup> 15 U.S.C. 78f(b)(8).

the Exchange assesses fees or calculates rebates. Instead, this change is intended to provide greater specificity and clarity to the Exchange's Price List for the benefit of member organizations and investors.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>18</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>19</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

under Section 19(b)(2)(B)<sup>20</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2016-36 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-NYSE-2016-36. 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-2016-36 and

should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016-12876 Filed 6-1-16; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-77928; File No. SR-ISE-2015-30]

**Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Rule 804(g)**

May 26, 2016.

On November 10, 2015, International Securities Exchange, LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to require clearing member approval before a market maker could resume trading after the activation of a market-wide speed bump under Exchange Rule 804(g). The proposed rule change was published for comment in the **Federal Register** on November 30, 2015.<sup>3</sup> On January 13, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to February 28, 2016.<sup>4</sup> On February 26, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>5</sup> to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 76506 (November 23, 2015), 80 FR 74829.

<sup>4</sup> See Securities Exchange Act Release No. 76893 (January 13, 2016), 81 FR 3217 (January 20, 2016).

<sup>5</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>6</sup> See Securities Exchange Act Release No. 77246 (February 26, 2016), 81 FR 11305 (March 3, 2016).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(2).

<sup>20</sup> 15 U.S.C. 78s(b)(2)(B).

filing of the proposed rule change.<sup>7</sup> The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.<sup>8</sup> The 180th day for this filing is May 28, 2016.

The Commission is extending the 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 and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act<sup>9</sup> and for the reasons stated above, the Commission designates July 27, 2016, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR-ISE-2015-30).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-12875 Filed 6-1-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77930; File No. SR-NYSE-2016-38]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 130

May 26, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on May 16, 2016, 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 Rule 130 to specify that, unless otherwise required by rule, all transactions effected on the Exchange would be processed anonymously. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Rule 130 to specify that, except as otherwise required by the Exchange's rules,<sup>4</sup> all transactions effected on the Exchange and all reports associated with such transaction would be processed anonymously and would not reveal contra-party identities.

Rule 130 currently provides that "[n]otwithstanding any other rule to the contrary, each transaction effected on the Exchange shall be compared or otherwise closed out by the close of business on the Exchange on the business day following the day of the contract." The Exchange proposes to replace "notwithstanding any other rule to the contrary" with "unless otherwise specified by rule" and add a clause to Rule 130 providing that all transactions effected on the Exchange would be processed anonymously and that

<sup>4</sup> For example, face-to-face transactions on the Trading Floor, including Crowd trades executed verbally between two Floor brokers and between a Floor broker and a Designated Market Maker ("DMM"), would continue to require submission of certain contra side information, as required by Rules 123, 132, and 134. Exchange systems and the executing brokers would continue not to have access to any information about the ultimate customer (*i.e.*, the name of the member or member organization's customer) in an order or transaction.

transaction reports will indicate the details of the transaction, but will not reveal contra party identities.

Additionally, the Exchange proposes to add new subsection (b) to Rule 130 that provides that the Exchange would reveal contra-party identities in the following circumstances: (1) For regulatory purposes or to comply with an order of a court or arbitrator; (2) when a Qualified Clearing Agency ceases to act for a member organization or the member organization's clearing firm, and determines not to guarantee the settlement of the member organization's trades; or (3) if both parties to the transaction consent.<sup>5</sup> The proposed changes are intended to clarify and reflect the Exchange's current practice as it relates to electronic transactions and align with the rules of other national securities exchange that preserve anonymity through the settlement process.<sup>6</sup>

###### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),<sup>7</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market by furthering the important goal of post-trade anonymity. Similarly, the proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market by providing transparency to the Exchange's existing process to process trades anonymously, which is consistent with that of other national securities exchanges.<sup>8</sup> The Exchange believes that post-trade anonymity benefits investors because preserving anonymity through settlement limits the potential market

<sup>5</sup> The Exchange proposes non-substantive, technical amendments to re-number the remaining paragraphs of Rule 130 accordingly.

<sup>6</sup> See NYSE Arca Equities, Inc. ("NYSE Arca Equities") Rule 7.41, BATS BZX Exchange, Inc. ("BATS") Rule 11.15, and NASDAQ Stock Market LLC ("Nasdaq") Rule 4760.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See note 6, *supra*.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B)(ii)(I).

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B)(ii)(II).

<sup>9</sup> *Id.*

<sup>10</sup> 17 CFR 200.30-3(a)(31).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

impact that disclosing contra-party identities could have, which might include the ability to detect trading patterns and make assumptions about the potential direction of the market based on the identified contra party's presumed client-base. The Exchange further believes it is appropriate to carve out Floor-based face-to-face trades from the anonymity requirement because such trades are, by definition, not anonymous.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather intended to align the Exchange's practice with the rules of other national stock 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)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>11</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2016-38 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-NYSE-2016-38. 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-2016-38 and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2016-12877 Filed 6-1-16; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-77927; File No. SR-ISE Gemini-2015-17]

### **Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Rule 804(g)**

May 26, 2016.

On November 12, 2015, ISE Gemini, LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to require clearing member approval before a market maker could resume trading after the activation of a market-wide speed bump under Exchange Rule 804(g). The proposed rule change was published for comment in the **Federal Register** on November 30, 2015.<sup>3</sup> On January 13, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to February 28, 2016.<sup>4</sup> On February 26, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>5</sup> to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act provides that proceedings to determine whether to disapprove a proposed rule change

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 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.

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 76505 (November 23, 2015), 80 FR 74824.

<sup>4</sup> See Securities Exchange Act Release No. 76894 (January 13, 2016), 81 FR 3213 (January 20, 2016).

<sup>5</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>6</sup> See Securities Exchange Act Release No. 77247 (February 26, 2016), 81 FR 11309 (March 3, 2016).

must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change.<sup>7</sup> The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.<sup>8</sup> The 180th day for this filing is May 28, 2016.

The Commission is extending the 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 and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act<sup>9</sup> and for the reasons stated above, the Commission designates July 27, 2016, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR-ISE Gemini-2015-17).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-12874 Filed 6-1-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77925; File No. SR-NYSEArca-2016-78]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Schedule of Fees Effective June 1, 2016

May 26, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 23, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services ("Fee Schedule"). The Exchange proposes to implement the fee changes on June 1, 2016. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend the Fee Schedule, as described below, and implement the fee changes on June 1, 2016.

On February 22, 2016, the Exchange commenced the implementation of Pillar, the Exchange's new technology trading platform.<sup>4</sup> Pillar is the integrated trading technology platform designed to use a single specification for connection to the equities and options markets operated by NYSE Arca and its affiliates, New York Stock Exchange LLC and NYSE MKT LLC. NYSE Arca Equities was the first trading system to

migrate to Pillar. Securities traded on the Exchange were migrated to Pillar in phases. The Exchange previously filed a proposed rule change to amend its Fee Schedule to adopt references that would be applicable during the migration to Pillar.<sup>5</sup> Specifically, the Exchange adopted language stating that the Fee Schedule would also apply to securities traded on Pillar during the migration. The migration of securities to Pillar is now complete and all securities are now traded on Pillar. Therefore, the Exchange now proposes to amend the Fee Schedule to remove references adopted in the Pillar Fee Filings.

###### Mid-Point Passive Liquidity Order—Securities \$1.00 and Greater

The Exchange currently provides per share credits under Tier 1, Tier 2 and Basic Rates<sup>6</sup> for Mid-Point Passive Liquidity ("MPL") Orders that provide liquidity based on the Average Daily Volume ("ADV") of provided liquidity in MPL Orders for Tape A, Tape B and Tape C Securities combined ("MPL Adding ADV"). Specifically, for ETP Holders and Market Makers that have MPL Adding ADV during a billing month of at least 3 million shares, the Exchange provides a credit of \$0.0015 for Tape A securities and \$0.0020 for Tape B and Tape C securities. For ETP Holders and Market Makers with MPL Adding ADV during a billing month of at least 1.5 million shares but less than 3 million shares, the Exchange provides a credit of \$0.0015 for Tape A, Tape B and Tape C securities. For ETP Holders and Market Makers with MPL Adding ADV during a billing month of less than 1.5 million shares, the Exchange provides a credit of \$0.0010 for Tape A, Tape B and Tape C securities. The Exchange also currently charges a fee of

<sup>5</sup> See Securities Exchange Act Release Nos. 77124 (February 12, 2016), 81 FR 8548 (February 19, 2016) (SR-NYSEArca-2016-18); and 77588 (April 12, 2016), 81 FR 22676 (April 18, 2016) (SR-NYSEArca-2016-54) ("Pillar Fee Filings").

<sup>6</sup> Tier 1 applies to ETP Holders and Market Makers (1) that provide liquidity an average daily share volume per month of 0.70% or more of the US CADV. Tier 2 applies to ETP Holders and Market Makers that provide liquidity an average daily share volume per month of 0.30% or more, but less than 0.70% of the US CADV. Basic Rates apply when tier rates do not apply. Tier 3 applies to ETP Holders and Market Makers that provide liquidity an average daily share volume per month of 0.20% or more, but less than 0.30% of the US CADV. Basic Rates apply when tier rates do not apply. US CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B)(ii)(I).

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B)(ii)(II).

<sup>9</sup> *Id.*

<sup>10</sup> 17 CFR 200.30-3(a)(31).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (Notice) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (Order) (SR-NYSEArca-2015-38) ("Pillar I Filing"); 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) (Notice) and 76267 (Oct. 26, 2015), 80 FR 66951 (Oct. 30, 2015) (Order) (SR-NYSEArca-2015-56) ("Pillar II Filing"); 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) (Notice) and 76198 (Oct. 20, 2015), 80 FR 65274 (Oct. 26, 2015) (Order) (SR-NYSEArca-2015-58) ("Pillar III Filing"); and 76085 (Oct. 6, 2015), 80 FR 61513 (Oct. 13, 2015) (Notice) and 76869 (Jan. 11, 2016) (Order) (SR-NYSEArca-2015-86) ("Pillar Auction Filing").

\$0.0030 per share for MPL Orders in Tape A, Tape B and Tape C securities that remove liquidity from the Exchange that are not designated as “Retail Orders.”<sup>7</sup> In addition, MPL Orders removing liquidity from the Exchange that are designated as Retail Orders are not currently subject to a fee. On Pillar, Mid-Point Passive Liquidity Order is named Mid-Point Liquidity Order and with this proposed rule change, the Exchange proposes to replace references to Mid-Point Passive Liquidity Order with Mid-Point Liquidity Order in each of the Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule in which fees and credits for Mid-Point Liquidity Orders are described. The Exchange is not proposing any change to the fees charged or credits provides [sic] for Mid-Point Liquidity Orders in securities priced \$1.00 and greater.

Orders designated as retail orders for securities traded on the Exchange would need to meet the requirements of Rule 7.44P(a)(3) and with this proposed rule change, the Exchange proposes to amend the Fee Schedule to replace the application of Rule 7.44 with Rule 7.44P to such securities.

#### Opening Auction—Securities \$1.00 and Greater

The Fee Schedule currently provides that a fee of \$0.0015 per share is charged for certain orders executed in the Opening Auction. The order types that may trade in these auctions include Market Orders and Auction-Only Orders.<sup>8</sup> This fee is capped at \$20,000 per month per Equity Trading Permit ID. On Pillar, the Opening Auction is named the Early Open Auction and with this proposed rule change, the Exchange proposes to replace references to Opening Auction with Early Open Auction in each of the Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule in which fees for trades in the Early Open Auction are described. The Exchange is not proposing any change to the fees charged for orders executed

<sup>7</sup> Retail Orders are defined in the Fee Schedule as orders designated as retail orders and that meet the requirements of Rule 7.44P(a)(3), but that are not executed in the Retail Liquidity Program. The Retail Liquidity Program is a pilot program designed to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and securities traded pursuant to unlisted trading privileges while also providing the potential for price improvement to such order flow. See Rule 7.44P. See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107).

<sup>8</sup> See NYSE Arca Equities Rule 7.31P(c). An Auction-Only order is executable during the next auction following entry of the order. If the Auction-Only Order is not executed in the auction, the balance is cancelled. Auction-Only orders are only available for auctions that take place on the Exchange and are not routed to other exchanges.

in the Early Open Auction in securities priced \$1.00 and greater.

#### Market Order Auction—Securities \$1.00 and Greater

The Fee Schedule currently provides that a fee of \$0.0015 per share is charged for certain orders executed in the Market Order Auction. The order types that may trade in these auctions include Market Orders and Auction-Only Orders. This fee is capped at \$20,000 per month per Equity Trading Permit ID. On Pillar, the Market Order Auction is named the Core Open Auction and with this proposed rule change, the Exchange proposes to replace references to Market Order Auction with Core Open Auction in each of the Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule in which fees for trades in the Core Open Auction are described. The Exchange is not proposing any change to the fees charged for orders executed in the Core Open Auction in securities priced \$1.00 and greater.

#### Market Order Auction—Securities Less Than \$1.00

The Fee Schedule currently provides that a fee of 0.1% of the total dollar value will be charged for round lot and odd lot executions of securities priced below \$1.00 that take place during a Market Order Auction. On Pillar, the Market Order Auction is named the Core Open Auction and with this proposed rule change, the Exchange proposes to replace references to Market Order Auction with Core Open Auction. The Exchange is not proposing any change to the fee charged for orders executed in the Core Open Auction in securities priced below \$1.00.

#### Passive Liquidity Order—Securities \$1.00 and Greater

The Fee Schedule currently provides that no fee or credit is charged for Passive Liquidity Orders that provide liquidity to the Book in Tape A, Tape B or Tape C securities. The Fee Schedule further provides that a fee of \$0.0030 per share is charged for Passive Liquidity Orders that take liquidity from the Book in Tape A and Tape C securities, and a fee of \$0.0028 per share is charged for such orders that take liquidity from the Book in Tape B securities. On Pillar, Passive Liquidity Order is named Limit Non-Displayed Order and with this proposed rule change, the Exchange proposes to replace references to Passive Liquidity Order with Limit Non-Displayed Order in each of the Tier 1, Tier 2, Tier 3 and Basic Rates sections of the Fee Schedule in which fees for Limit Non-Displayed Orders are described. Additionally, the

Exchange proposes to raise the fee for Limit Non-Displayed Orders in securities priced \$1.00 and greater that take liquidity in Tape B Securities to \$0.00285 per share referenced in the Tier 1, Tier 2 and Tier 3 sections of the Fee Schedule. The Exchange is not proposing any change to the fee charged for orders that take liquidity in Tape A and Tape C securities or to the rebate provided for Limit Non-Displayed Orders that add liquidity in securities priced \$1.00 and greater or to the fee for Limit Non-Displayed Orders in securities priced \$1.00 and greater that take liquidity in Tape B securities referenced in the Basic Rates section of the Fee Schedule.

#### Passive Liquidity Order—Lead Market Makers

For Lead Market Makers (“LMMs”),<sup>9</sup> the Exchange currently provides a \$0.0015 per share credit for Passive Liquidity Orders that provide liquidity in securities for which they are registered as the LMM. On Pillar, Passive Liquidity Order is named Limit Non-Displayed Order and with this proposed rule change, the Exchange proposes to replace references to Passive Liquidity Order with Limit Non-Displayed Order in the section of the Fee Schedule related to Market Maker Fees and Credits. The Exchange is not proposing any change to the credit provided to LMMs for Limit Non-Displayed Orders.

#### Post No Preference Blind Order—Lead Market Makers

For LMMs, the Exchange currently provides a \$0.0030 per share credit for orders that provide undisplaced liquidity in Post No Preference Blind (PNP B) Orders to the Book in securities for which they are registered as LMMs. On Pillar, PNP B Order is named Arca Only Order and with this proposed rule change, the Exchange proposes to replace references to PNP B Order with Arca Only Order on the Fee Schedule. The Exchange is not proposing any change to the credit provided to LMMs that provide undisplaced liquidity in securities in which they are registered as LMMs using Arca Only Orders.

#### Closing Auction—Securities \$1.00 and Greater

The Fee Schedule currently provides that a fee of \$0.0010 per share is charged

<sup>9</sup> The term “Lead Market Maker” means a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market. See NYSE Arca Equities Rule 1.1(ccc).

for Market,<sup>10</sup> Market-On-Close (“MOC”)<sup>11</sup> and Limit-On-Close (“LOC”)<sup>12</sup> Orders executed in a Closing Auction. The Exchange also currently charges this \$0.0010 per share fee for Auction-Only Orders that are executed in a Closing Auction, which are effectively equivalent to a MOC Order or LOC Order. The Exchange does not charge for Limit Orders that are executed in a Closing Auction. This fee is applicable to Tape A, Tape B and Tape C securities and is referenced in Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule. The Exchange proposes to raise this fee to \$0.0012 per share for Tape A, Tape B and Tape C securities referenced in the Basic Rates section only. The fee for Tape A, Tape B and Tape C securities referenced in Tier 1 and Tier 2 of the Fee Schedule remain unchanged.

#### Tape B Orders

The Fee Schedule currently provides that a fee of \$0.0028 per share is charged for orders that take liquidity from the Book in Tape B securities in each of Tier 1, Tier 2, Tier 3, and Cross-Asset Tier 2 sections of the Fee Schedule, and for Limit Non-Displayed Orders that take liquidity from the Book in Tape B securities in each of Tier 1, Tier 2 and Tier 3 of the Fee Schedule. The Exchange proposes to increase this fee to \$0.00285 per share.

#### LMM Transaction Fees

The Exchange currently charges a fee of \$0.0028 per share to LMMs for orders in primary listed securities that remove liquidity from the NYSE Arca Book. The Exchange proposes to increase this fee to \$0.00285 per share.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Sections

<sup>10</sup> A Market Order is an unpriced order to buy or sell a stated amount of security that is to be traded at the best price obtainable without trading through the NBBO. A Market Order must be designated Day and will be rejected on arrival or cancelled if resting if there is no contra-side NBBO. See NYSE Arca Equities Rule 7.31P(a)(1).

<sup>11</sup> A MOC Order is a Market Order that is to be traded only during the Closing Auction. See NYSE Arca Equities Rule 7.31P(c)(4).

<sup>12</sup> A LOC Order is a Limit Order that is to be traded only during the Closing Auction. See NYSE Arca Equities Rule 7.31P(c)(3).

<sup>13</sup> 15 U.S.C. 78f(b).

6(b)(4) and (5) of the Act,<sup>14</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes to the Fee Schedule, which include the deletion of references to order types that have been renamed on Pillar, is reasonable, equitable and not unfairly discriminatory because the changes are intended to add clarity to the Fee Schedule and avoid investor confusion, which is in the public interest. The Exchange further believes that the proposed changes are designed to enable market participants to better understand how Exchange fees would be applicable to market participants, which should make the overall Fee Schedule more transparent and comprehensive to the benefit of the investing public. Therefore, the Exchange believes these changes will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange believes that the proposal to raise the fee charged for Market, MOC, LOC and Auction-Only Orders executed in a Closing Auction referenced in the Basic Rates section is reasonable because the proposed rate is within a range of fees charged by other exchanges. For example, Bats BZX Exchange (“BZX”) currently charges a \$0.0010 per share fee for orders in BZX listed securities executed in a Closing Auction on that exchange.<sup>15</sup> Additionally, NASDAQ Stock Market (“NASDAQ”) charges a fee that ranges between \$0.0008 and \$0.0015 per share for certain orders executed during the NASDAQ Closing Cross on that exchange.<sup>16</sup> The Exchange further believes that the proposed fee increase is equitable and not unfairly discriminatory because it would apply to all Market, MOC, LOC and Auction-Only Orders executed in a Closing Auction in securities with a per share price of \$1.00 and greater.

The Exchange believes that the proposal to increase the fee charged for orders in Tape B Securities in Tier 1, Tier 2, Tier 3 and Cross-Asset Tier 2 that take liquidity from the Book, and for Limit Non-Displayed Orders that take

liquidity from the Book in Tape B securities in each of Tier 1, Tier 2 and Tier 3, is reasonable because the proposed rate will continue to be lower than the fee charged by other exchanges. For example, Bats EDGX Exchange (“EDGX”) currently charges a fee of \$0.0029 per share for orders that remove liquidity in Tape B securities on that exchange,<sup>17</sup> while NASDAQ charges a fee of \$0.0030 per share for orders that remove liquidity in Tape B securities on that exchange.<sup>18</sup> The Exchange further believes that the proposed fee increase is equitable and not unfairly discriminatory because it would apply to all orders in Tape B Securities in Tier 1, Tier 2, Tier 3 and Cross-Asset Tier 2 that take liquidity from the Book.

The Exchange believes that it is reasonable to increase the fee charged to LMMs for orders in primary listed securities that remove liquidity from the NYSE Arca Book as this fee would be the same as the fee increase proposed by the Exchange to Tier 1, Tier 2, Tier 3 and Cross-Asset Tier 2 ETP Holders and Market Makers that take liquidity in Tape B securities. In addition, the proposed fee change is equitable and not unfairly discriminatory because it would apply uniformly to all similarly situated LMMs.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will not [sic] impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. With respect to the changes related to the renaming of order types on Pillar, the proposed changes are not designed to address any competitive issue but rather provide the public and investors with a Fee Schedule that is transparent. The proposed change to raise fees does not impose any burden on competition as the fee changes are consistent with the fees charged by other exchanges.<sup>19</sup>

### 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.

<sup>17</sup> See EDGX Fee Schedule at [http://www.bats.com/us/equities/membership/fee\\_schedule/edgx/](http://www.bats.com/us/equities/membership/fee_schedule/edgx/).

<sup>18</sup> See NASDAQ Price list at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

<sup>19</sup> See *supra*, notes 15–18.

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>15</sup> See BZX Fee Schedule at [http://www.bats.com/us/equities/membership/fee\\_schedule/bzx/](http://www.bats.com/us/equities/membership/fee_schedule/bzx/).

<sup>16</sup> See Execution Fees for the NASDAQ Closing Cross at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.



### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>20</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>21</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>22</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2016-78 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-2016-78. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2016-78, and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-12872 Filed 6-1-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77934; File No. SR-NYSEArca-2016-80]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31P(e) Regarding ALO Orders

May 26, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 24, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31P(e)

(Orders and Modifiers) regarding ALO Orders. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.31P(e) ("Rule 7.31P") regarding ALO Orders. These proposed changes would revise how ALO Orders would price and trade on the Pillar trading platform only.

###### Overview

Currently, an arriving ALO Order will trade only if its limit price crosses the working price of a non-displayed order, which for purposes of ALO Orders only, includes a displayed odd-lot sized order priced better than the Best Bid (BB) or Best Offer (BO).<sup>4</sup> An arriving ALO Order will not trade with the BB or BO, even if such trade would provide price improvement to the ALO Order. In addition, an arriving ALO Order that would lock the BB or BO on the NYSE Arca Marketplace will be assigned a working price and display price one minimum price variation ("MPV")

<sup>4</sup> See Rule 7.31P(e)(2)(C) (defining nondisplayed order(s) as sell (buy) orders priced below (above) the BO (BB)). The Exchange is proposing a clarifying amendment to Rule 1.1(h) to specify that the term "BBO" means the best bid or offer that is a protected quotation, which is defined in Rule 1.1(eee) as having the same meaning as that term is defined in Regulation NMS, on the NYSE Arca Marketplace. Adding the phrase "that is a protected quotation" clarifies that the terms BBO, BB, and BO does not include odd lots that do not aggregate to a round lot or more. The term "NYSE Arca Marketplace" is defined in Rule 1.1(e) as the electronic securities communications and trading facility designated by the Board of Directors through which orders of Users are consolidated for execution and/or display.

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(2).

<sup>22</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>23</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

worse than the BB or BO.<sup>5</sup> Because displayed odd lot orders are not considered the BB or BO, an arriving ALO Order to buy with a limit price equal to a resting displayed odd lot order to sell would lock the odd lot order's displayed price on the Exchange's book.<sup>6</sup>

The Exchange proposes to make two substantive changes to how ALO Orders would operate on Pillar:

- An ALO Order that crosses the working price of any displayed or non-displayed orders would trade with the resting order(s); and
- An ALO Order that locks the price of any-sized display order would be re-priced.

The Exchange believes that these proposed changes would simplify the display and execution of ALO Orders on Pillar by applying consistent treatment of how such orders would behave. Specifically, an ALO Order would trade regardless of whether it crosses the price of displayed or non-displayed interest and would be re-priced regardless of whether it locks the price of a round lot or odd lot displayed interest. The Exchange further believes that the proposed changes would harmonize the behavior of ALO Orders on the Exchange with the operation of similar orders on other exchanges.<sup>7</sup>

#### Proposed Rule Change

To effect the rule change, the Exchange proposes to delete current Rules 7.31P(e)(2)(B)(i) and (B)(ii) and 7.31P(e)(2)(C), (C)(i), and (C)(ii) and add new subparagraphs (i)–(iv) to Rule 7.31P(e)(2)(B) that would merge the concepts currently set forth in Rules 7.31P(e)(2)(B) and (C). The Exchange also proposes to move text from current Rule 7.31P(e)(B)(iii) and (iv) to new subsection (C), with proposed modifications described below. The proposed amendments would include both the substantive changes described above and non-substantive clarifying changes.

The Exchange proposes to amend Rule 7.31P(e)(2)(B) to describe how ALO Orders to buy (sell) that, at the time of entry, are marketable against an order of any size on the NYSE Arca Book or would lock or cross a protected

quotation, in violation of Rule 610(d) of Regulation NMS, would be priced and trade. The Exchange proposes to replace the phrase “the BO (BB)” in the current rule with the phrase “an order of any size to sell (buy) on the NYSE Arca Book” to change the scope of Rule 7.31P(e)(2)(B) to describe how an ALO Order would be priced and executed when marketable against any displayed and non-displayed orders on the NYSE Arca Book, and not only when marketable against the BO or BB. The Exchange also proposes to add the clause “or trade, or both” to the current rule to specify that this section of the rule would address not only how an ALO Order is priced, but also how it may trade, or both.

Proposed new Rule 7.31P(e)(2)(B)(i) would provide that if there are no displayed or non-displayed orders on the NYSE Arca Book priced equal to or better than the PBO (PBB),<sup>8</sup> the ALO Order to buy (sell) would have a working price equal to the PBO (PBB) and a display price one MPV below (above) the PBO (PBB). Current Rule 7.31P(e)(2)(B)(i) provides that if the BO (BB) is higher (lower) than the PBO (PBB), the ALO Order to buy (sell) will have a working price of the PBO (PBB) and a display price one MPV below (above) the PBO (PBB). The Exchange's proposal would mean that an ALO Order would have a working price at the PBO (PBB) and a display price one MPV worse than the PBO (PBB) if there are any orders on the NYSE Arca Book, even if those orders are undisplayed or odd lot orders and thus not part of the BO (BB).

Proposed new Rule 7.31P(e)(2)(B)(ii) would provide that if the limit price of the ALO Order to buy (sell) crosses the working price of any displayed or non-displayed order on the NYSE Arca Book priced equal to or better than the PBO (PBB), it would trade as the liquidity taker with such order(s). This proposed rule combines the text currently set forth in Rule 7.31P(e)(2)(C)(i), which provides that an ALO Order will trade as the liquidity taker if it crosses the working price of a non-displayed order, with the proposed substantive change that an ALO Order would also trade if it crosses the price of a displayed order. This proposed amendment would also include a substantive change that if the price of an ALO Order crosses non-displayed interest priced equal to the Exchange's BBO, the ALO Order would trade. This proposed rule text differs

from current Rule 7.31P(e)(2) because currently, an ALO Order would trade with non-displayed interest only if it is priced better than the BBO. The Exchange proposes to make this change because the participant sending the ALO Order would get the benefit of potential price improvement without trading through the PBBO.<sup>9</sup>

Because trading with both displayed and non-displayed orders would be addressed in this proposed rule text, the Exchange proposes to delete Rule 7.31P(e)(2)(C)(i), which addresses trading with non-displayed orders only. The Exchange also proposes to add, for clarity, that any untraded quantity of the ALO Order would have a working price equal to the PBO (PBB) and a display price one MPV below (above) the PBO (PBB). This proposed rule text represents current functionality and clarifies that after trading with any interest that it crosses, the ALO Order would be priced consistent with proposed Rule 7.31P(e)(2)(B)(i).<sup>10</sup>

Proposed Rule 7.31P(e)(2)(B)(iii) would provide that if the limit price of the ALO Order locks the display price of any order ranked Priority 2—Display Orders on the NYSE Arca Book priced equal to or better than the PBO (PBB), it would be assigned a working price and display price one MPV worse than the price of the displayed order on the NYSE Arca Book.<sup>11</sup> This proposed rule text is based, in part, on current Rule 7.31P(e)(2)(B)(ii), which provides that if the BO (BB) is equal to the PBO (PBB), an ALO Order to buy (sell) will have a working price and display price one MPV below (above) the PBO (PBB). By proposing to refer to any order ranked Priority 2—Display Orders, the new rule would include the substantive change that the Exchange would re-price an ALO Order that locks a display order of

<sup>5</sup> See Rule 7.6 (Trading Differentials) (defining the MPV for quoting and entry of orders in securities traded on the NYSE Arca Marketplace).

<sup>6</sup> See Rule 7.31P(e)(2)(C)(ii).

<sup>7</sup> See, e.g., BATS BZX Exchange, Inc. (“BZX”) Rules 11.9(c)(6) (BZX Post Only Order removes contraside liquidity if the trade provides price improvement to the arriving BZX Post Only Order) and Nasdaq Stock Market LLC (“Nasdaq”) Rule 4702(b)(4)(A) (Post-Only Order that locks or crosses an order on the Nasdaq Book will be either repriced or trade if it receives price improvement).

<sup>8</sup> See Rule 1.1(dd) (defining the terms “Best Protected Bid” or “PBB” as the highest Protected Bid and “Best Protected Offer” or “PBO” as the lowest Protected Offer).

<sup>9</sup> For all securities priced over \$1.00, the price improvement that an ALO Order would receive for trading with an order under the proposed rule would be greater than any fee for trading as the liquidity taker. While this may not be true for all transactions for securities priced under \$1.00, the Exchange proposes to apply consistent behavior to how an ALO Order trades, regardless of the fees that would be charged.

<sup>10</sup> For example, assume the PBO on an Away Market is 10.10 and the Exchange has an offer to sell 50 shares priced at 10.10 that is ranked Priority 2—Display Orders. An arriving ALO Order to buy priced at 10.11 for 200 shares would trade with the 50 share sell order at 10.10 and the remaining 150 shares of that ALO Order would be assigned a working price of 10.10 and a display price of 10.09.

<sup>11</sup> For example, assume the PBO is 10.10 and the Exchange has an odd-lot order to sell ranked Priority 2—Display Order priced at 10.09. An ALO Order to buy priced at 10.09 that locks the price of the odd-lot order to sell would be assigned a working price and display price of 10.08.

any size, including an odd-lot order.<sup>12</sup> Because the proposed rule is inclusive of how an ALO order would be priced if it locks the BB or BO, the Exchange proposes to delete current Rule 7.31P(e)(2)(B)(ii).

Proposed Rule 7.31P(e)(2)(B)(iv) would provide that if the limit price of the ALO Order locks the working price of any order ranked Priority 3—Non-Display Orders<sup>13</sup> on the NYSE Arca Book priced equal to or better than the PBO (PBB), it would be assigned a working price equal to the PBO (PBB) and a display price one MPV below (above) the PBO (PBB). This proposed rule text is based on current Rule 7.31P(e)(2)(C)(ii), which provides that if the limit price of the ALO Order to buy (sell) is equal to the working price of resting non-displayed order(s) to sell (buy), it will post to the NYSE Arca Book and will not trade with such order(s). By referring to orders ranked Priority 3—Non-Display Orders rather than “non-displayed orders,” proposed Rule 7.31P(e)(2)(B)(iv) would not re-price ALO Orders when they lock the working price of displayed odd lot orders. This represents a substantive change from current Rule 7.31P(e)(2)(C), which re-prices ALO Orders when they lock the working price of displayed odd lot orders because such orders are not included in the BO or BB. In addition, the proposed rule text would specify how the ALO Order would be priced when it locks the non-displayed order, which is how an ALO Order would be priced currently, *i.e.*, if the resting non-displayed order to sell (buy) equals the PBO (PBB), the ALO Order to buy (sell) would be priced as provided for in proposed Rule 7.31P(e)(2)(B)(i).

Proposed Rule 7.31P(e)(2)(B)(iv)(a) would further provide that if there are any displayed orders at the working price of an order ranked Priority 3—Non-Display Orders, the ALO Order would be re-priced under proposed Rule 7.31P(e)(2)(B)(iii). This proposed rule text clarifies that if an ALO locks both displayed and non-displayed orders at the same price, the rule governing re-pricing ALO Orders off of the resting displayed order trumps displaying the ALO at the locking price.

Proposed Rule 7.31P(e)(2)(B)(iv)(b) would provide that if the resting

order(s) is a Limit Non-Displayed Order or an Arca Only Order to sell (buy) that has been designated with a Non-Display Remove Modifier, the ALO Order will trade with such order(s) as the liquidity provider.<sup>14</sup> This rule text is based on the second clause of current Rule 7.31P(e)(2)(C)(ii) with a clarifying, non-substantive change that in such case, the ALO Order would be considered the liquidity provider.<sup>15</sup> Because ETP Holders have the option to include a Non-Display Remove Modifier on Arca Only or Limit Non-Displayed Orders, and therefore such orders could be eligible to trade with an arriving ALO Order, absent such designation, if such orders are locked by an ALO Order, they would not trade, even after the ALO Order rests on the book. The Exchange therefore proposes a clarifying amendment to specify that unless a resting order is designated with a Non-Display Remove Modifier, an ALO Order would trade only with arriving interest.<sup>16</sup> This proposed clarifying amendment is consistent with the current rule governing MPL—ALO Orders on the Pillar trading platform.<sup>17</sup>

Proposed Rule 7.31P(e)(v) would provide that an ALO Order to buy (sell) would not be assigned a working price or display price above (below) the limit price of such order. This proposed rule change makes clear that an ALO Order would never be priced outside of its limit price, regardless of the contra-side PBBO or orders on the Exchange book. For example, if the limit price of an ALO Order is worse than the contra-side PBBO or orders ranked Priority 2—Display Orders, the ALO Order would

<sup>14</sup> Because proposed Rule 7.31P(e)(2)(B)(iv) includes when an order ranked Priority 3—Non-Display Orders is priced equal to the contra-side PBBO, if the arriving ALO Order locks the price of contra-side PBBO, it would trade with a resting non-displayed order at that price that has been designated with the Non-Display Remove Modifier and any remaining quantity of the ALO Order would be priced consistent with proposed Rule 7.31P(e)(2)(B)(i).

<sup>15</sup> See also Rules 7.31P(d)(2)(B) (a Limit Non-Displayed Order designated with a Non-Display Remove Modifier will trade as the liquidity taker) and 7.31P(e)(1)(C) (an Arca Only Order designated with a Non-Display Remove Modifier will trade as the liquidity taker).

<sup>16</sup> For example, assume the PBO is 10.10 and the Exchange has a Limit Non-Displayed Order to sell at 10.09 for 100 shares (Order A) that does not include a Non-Display Remove Modifier. An arriving ALO Order to buy 200 shares priced at 10.09 will lock that Limit Non-Displayed Order. Assume the Exchange now receives another Limit Non-Display Order to sell priced at 10.09 for 100 shares (Order B). Order B, as an arriving order, will trade 100 shares with the ALO Order. The remaining 100 shares of the ALO Order will continue to lock Order A.

<sup>17</sup> See NYSE Arca Equities Rule 7.31P(d)(3)(F) (“A resting MPL—ALO Order to buy (sell) will trade with an arriving order to sell (buy) that is eligible to trade at the midpoint of the PBBO.”)

be assigned a display price and working price of its limit price, and would not be priced based off of the PBBO or displayed orders on the NYSE Arca Book, as provided for in proposed Rule 7.31P(e)(2)(B)(i)–(iv).

Current Rules 7.31P(e)(2)(B)(iii) and (B)(iv) describe what happens to a resting ALO Order when the PBBO re-prices. The Exchange proposes to describe re-pricing of a resting ALO Order in a separate subsection by adding a new subsection (C) to Rule 7.31P(e)(2). The Exchange also proposes to specify that this section of the Rule would also address how a resting ALO Order may trade when the PBBO re-prices. New Rule 7.31P(e)(2)(C) would provide that once resting on the NYSE Arca Book, an ALO Order would be re-priced or trade, or both, as set forth in Rules 7.31P(e)(2)(C)(i) and (ii).

Proposed Rule 7.31P(e)(2)(C)(i) is based on current Rule 7.31P(e)(2)(B)(iii), which provides that if the PBO (PBB) re-prices higher (lower), an ALO Order to buy (sell) will be assigned a new working price and display price consistent with current Rules 7.31P(e)(2)(B)(i) and (ii). The Exchange proposes to amend the rule text to make the following two substantive changes, discussed above: (1) An ALO Order that locks a displayed odd-lot would be re-priced off of that odd lot, and (2) if the limit price of an ALO Order crosses the price of any order, it would trade. Accordingly, as proposed, Rule 7.31P(e)(2)(C)(i) would provide that if orders ranked Priority 2—Display Order or the PBO (PBB) re-prices to a worse price, the ALO Order would trade or be assigned a new working price and display price, or both, consistent with Rules 7.31P(e)(2)(B)(i)–(iv). In other words, with each such re-pricing of the displayed orders on the NYSE Arca Book or PBBO, the Exchange would re-evaluate whether the ALO should trade (*e.g.*, if its limit price crosses any orders on the NYSE Arca Book) or be re-priced (*e.g.*, if its limit price locks any displayed or non-displayed orders on the NYSE Arca Book), or both.

Proposed Rule 7.31P(e)(2)(C)(ii) is based on current Rule 7.31P(e)(2)(B)(iv), which provides that if the PBO (PBB) re-prices to be equal to or lower (higher) than its last display price or if its limit price no longer locks or crosses the PBO (PBB), a resting ALO Order will be re-priced pursuant to Rule 7.31P(e)(1)(A)(iii) and (iv). The Exchange proposes a non-substantive clarifying change to replace the second reference to “it” with the phrase “the ALO Order to buy (sell).”

The Exchange proposes to amend the rules governing Day ISO ALOs to

<sup>12</sup> See Rule 7.36P(b)(1) (Odd-lot sized Limit Orders and the displayed portion of a Reserve Orders are considered displayed for ranking purposes) and 7.36P(e)(2) (Priority 2—Display Orders defined as non-marketable Limit Orders with a displayed working price).

<sup>13</sup> See Rule 7.36P(e)(3) (Priority 3—Non-Display Orders defined as Non-marketable Limit Orders for which the working price is not displayed, including reserve interest of Reserve Orders).

conform to the proposed changes to ALO Orders discussed above. Specifically, the Exchange proposes to amend the second sentence of Rule 7.31P(e)(3)(D), which currently provides that a Day ISO ALO to buy (sell) that, at the time of entry, is marketable against the BO (BB) will not trade with orders on the NYSE Arca Book priced at the BO (BB) or higher (lower), but may trade through or lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO ALO. Consistent with the changes to ALO Orders described above, the Exchange proposes to amend this second sentence to provide instead that an arriving Day ISO ALO to buy (sell) may trade through or lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO ALO, and would be re-priced or trade, or both, as described in proposed Rules 7.31P(e)(3)(D)(i)–(iv).

The Exchange proposes to delete current Rule 7.31P(e)(3)(D)(i) and replace it with proposed Rules 7.31P(e)(3)(D)(i)–(iii), which are based on proposed Rules 7.31P(e)(2)(B)(ii)–(iv). Proposed paragraphs (e)(3)(D)(i)–(iii), unlike proposed paragraphs (e)(2)(B)(ii)–(iv), will not refer to the PBBO because a Day ISO ALO may trade through or lock a protected quotation, as follows:

- Proposed Rule 7.31P(e)(3)(D)(i) would provide that if the limit price of the Day ISO ALO crosses the working price of any displayed or non-displayed order on the NYSE Arca Book, it would trade as the liquidity taker with such order(s). Any untraded quantity of the Day ISO ALO would have a working price and display price equal to its limit price.

- Proposed Rule 7.31P(e)(3)(D)(ii) would provide that if the limit price of the Day ISO ALO locks the display price of any order ranked Priority 2—Display Orders on the NYSE Arca Book, it would be assigned a working price and display price one MPV worse than the price of the displayed order on the NYSE Arca Book.

- Proposed Rule 7.31P(e)(3)(D)(iii) would provide that if the limit price of the Day ISO ALO locks the working price of any order ranked Priority 3—Non-Display Orders on the NYSE Arca Book, it would have a working price and display price equal to the limit price of the ALO Order. Similar to proposed Rule 7.31P(e)(2)(B)(iv)(a), proposed Rule 7.31P(e)(3)(D)(iii)(a) would provide that if there are any displayed orders at the working price of an order ranked Priority 3—Non-Display Orders, the Day ISO ALO would be priced under proposed Rule 7.31P(e)(3)(D)(ii). In

addition, similar to proposed Rule 7.31P(e)(2)(B)(iv)(b), if the resting order is a Non-Displayed Limit Order or Arca Only Order that has been designated with a Non-Display Remove Modifier, the Day ISO ALO would trade with such order(s) as the liquidity provider.

Proposed Rule 7.31P(e)(3)(D)(iv) is based on current Rule 7.31P(e)(3)(D)(ii), which provides that after being displayed, a Day ISO ALO will be re-priced and re-displayed or trade, or both, based on changes to orders ranked Priority 2—Display Orders or the PBO (PBB) consistent with paragraphs (e)(2)(B)(iii) and (iv) of this Rule. The Exchange proposes a non-substantive, clarifying amendment to replace the term “it” with the term “a Day ISO ALO.” The Exchange also proposes to update the cross references to provide that a Day ISO ALO would be re-priced and re-displayed based on changes to the PBO (PBB) consistent with Rule 7.31P(e)(2)(C)(i) and (ii).

\* \* \* \* \*

Because of the technology changes associated with this proposed rule change, the Exchange will announce by Trader Update the implementation date.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>19</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by simplifying the operation of ALO Orders on Pillar by applying consistent treatment of how an ALO Order would behave if it crosses the price of any displayed or non-displayed interest (*i.e.*, trade) or locks the price of any-sized displayed interest (*i.e.*, re-price). Currently, an ALO Order trades on arrival if it would cross the price of non-displayed orders. The Exchange believes that the proposed substantive change to extend similar treatment when an ALO

Order crosses the price of any displayed orders that are priced equal to or better than the PBBO would remove impediments to and perfect the mechanism of a free and open market and a national market system because an ALO Order would have additional opportunities to receive price improvement. In addition, the Exchange believes that the proposed substantive change to re-price ALO Orders that lock the price of any-sized displayed orders would remove impediments to and perfect the mechanism of a free and open market and a national market system by eliminating the potential for an ALO Order to lock the price of a displayed odd lot order. The Exchange further believes that the two proposed substantive changes would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would harmonize the operation of ALO Orders with how similar orders function on other exchanges when the limit price of an ALO Order crosses the price of resting interest.<sup>20</sup>

The Exchange believes that the proposed non-substantive changes to the proposed rule would remove impediments to and perfect the mechanism of a free and open market and national market system by providing greater clarity to the rule text and re-organizing the rule text along similar functional lines. Finally, the Exchange believes that the proposed amendment to the definition of BBO would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote clarity in Exchange rules by specifying that the BBO is the Exchange’s protected quotation, and therefore would not include odd lots that do not aggregate to a round lot or more.

### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would reduce the burden on competition for its ETP Holders because it would simplify the operation of ALO Orders on Pillar by applying consistent treatment of how an ALO Order would behave if it crosses the price of any displayed or non-displayed interest (*i.e.*, trade) or locks the price of any-sized displayed interest (*i.e.*, re-price). Currently, an ALO Order only trades if

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> See *supra* note 7.

it crosses a non-displayed order on the NYSE Arca Book. As proposed, ALO Orders would trade if the limit price of such order crosses any displayed or non-displayed orders on the NYSE Arca Book, thus providing for similar treatment regardless of whether the contra-side order is displayed or not. In addition, currently, an ALO Order is re-priced so it would not lock the price of the BO or BB. As proposed, the Exchange would provide for similar treatment so that an ALO Order would not lock the price of a displayed order of any size. The proposed rule change would further reduce the burden on competition for its ETP Holders by harmonizing the operation of ALO Orders with how similar orders function on other exchanges.<sup>21</sup>

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>22</sup> and Rule 19b-4(f)(6) thereunder.<sup>23</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>24</sup> normally does not become operative for 30 days after the date of the filing. However Rule 19b-4(f)(6)(iii)<sup>25</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, the proposed rule change would consistently treat ALO Orders if they cross the price of displayed or non-

displayed interest (*i.e.*, trade),<sup>26</sup> which would increase the potential for price improvement for ALO Orders. Also, according to the Exchange, the proposed rule change would consistently treat ALO Orders if they lock the price of any-sized displayed interest (*i.e.*, re-price), which would reduce the potential for ALO Orders to lock the displayed price of an odd lot order and therefore reduce confusion in the market. In addition, the Exchange states that it anticipates that it will be able to implement the technology changes supporting this proposed rule change in less than 30 days from the date of filing. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>27</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2016-80 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.

<sup>26</sup> The Exchange states that this proposed change is based on the rules of BZX and Nasdaq. See *supra* note 7.

<sup>27</sup> 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).

All submissions should refer to File Number SR-NYSEARCA-2016-80. 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-2016-80 and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2016-12891 Filed 6-1-16; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 32127; 812-14399]**

**Ares Capital Corporation, et al.; Notice of Application**

May 26, 2016.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a) and 61(a) of the Act.

*Applicants:* Ares Capital Corporation (the "Company"), Ares Capital

<sup>28</sup> 17 CFR 200.30-3(a)(12).

<sup>21</sup> See *supra* note 7.

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>24</sup> 17 CFR 240.19b-4(f)(6).

<sup>25</sup> 17 CFR 240.19b-4(f)(6)(iii).

Management LLC (the “Adviser”), Ares Venture Finance GP LLC (the “General Partner”), and Ares Venture Finance, L.P. (“Ares SBIC”).

**SUMMARY:** *Summary of the Application:* The Company requests an order to permit it to adhere to a modified asset coverage requirement.

**DATES:** *Filing Dates:* The application was filed on December 12, 2014, and amended on May 11, 2015, and May 11, 2016.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 20, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Kipp deVeer, Chief Executive Officer, and Joshua M. Bloomstein, General Counsel, Ares Capital Corporation, 245 Park Avenue, 44th Floor, New York, NY 10167.

**FOR FURTHER INFORMATION CONTACT:** Kieran G. Brown, Senior Counsel, at (202) 551–6773, or James M. Curtis, Branch Chief, at (202) 551–6712 (Division of Investment Management, Chief Counsel’s Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission’s Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090.

### Applicants’ Representations

1. The Company, a Maryland corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company (“BDC”) under

the Act.<sup>1</sup> The Company’s investment objective is to generate both current income and capital appreciation through debt and equity investments. The Adviser, a Delaware limited liability company, is the investment adviser to the Company. The Adviser is registered under the Investment Advisers Act of 1940.

2. Ares SBIC, a Delaware limited partnership, received approval for a license from the Small Business Administration (“SBA”) to operate as a small business investment company (“SBIC”) under the Small Business Investment Act of 1958 (“SBIA”). Ares SBIC is excluded from the definition of investment company by section 3(c)(7) of the Act. The General Partner is the sole general partner of Ares SBIC and the Company is the sole member of the General Partner. The Company is the sole limited partner of Ares SBIC. The Company, directly or indirectly through the General Partner, wholly owns Ares SBIC.

### Applicants’ Legal Analysis

1. The Company requests an exemption pursuant to section 6(c) of the Act from the provisions of sections 18(a) and 61(a) of the Act to permit it to adhere to a modified asset coverage requirement with respect to any direct or indirect wholly-owned subsidiary of the Company that is licensed by the SBA to operate under the SBIA as an SBIC and relies on section 3(c)(7) for an exemption from the definition of “investment company” under the Act (each, an “SBIC Subsidiary”).<sup>2</sup> Applicants state that companies operating under the SBIA, such as the SBIC Subsidiary, are subject to the SBA’s substantial regulation of permissible leverage in their capital structure.

2. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company

<sup>1</sup> Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

<sup>2</sup> All existing entities that currently intend to rely on the order are named as applicants. Any other existing or future entity that may rely on the order in the future will comply with the terms and condition of the order.

operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in section 18(a)(1)(A) and (B).

3. Applicants state that the Company may be required to comply with the asset coverage requirements of section 18(a) (as modified by section 61(a)) on a consolidated basis because the Company may be deemed to be an indirect issuer of any class of senior security issued by Ares SBIC or another SBIC Subsidiary. Applicants state that applying section 18(a) (as modified by section 61(a)) on a consolidated basis generally would require that the Company treat as its own all assets and any liabilities held directly either by itself, by Ares SBIC, or by another SBIC Subsidiary. Accordingly, the Company requests an order under section 6(c) of the Act exempting the Company from the provisions of section 18(a) (as modified by section 61(a)), such that senior securities issued by each SBIC Subsidiary that would be excluded from its individual asset coverage ratio by section 18(k) if it were itself a BDC would also be excluded from the Company’s consolidated asset coverage ratio.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, because the SBIC Subsidiary would be entitled to rely on section 18(k) if it were a BDC, there is no policy reason to deny the benefit of that exemption to the Company.

### Applicants’ Condition

Applicants agree that any order granting the requested relief will be subject to the following condition.

The Company will not itself issue or sell any senior security and the Company will not cause or permit Ares SBIC or any other SBIC Subsidiary to issue or sell any senior security of which the Company, Ares SBIC or any other SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61(a)); provided that, immediately after the issuance or sale of any such senior security by any of the Company, Ares SBIC or any other SBIC Subsidiary, the Company, individually and on a consolidated basis, shall have

the asset coverage required by section 18(a) (as modified by section 61(a)). In determining whether the Company, Ares SBIC and any other SBIC Subsidiary on a consolidated basis have the asset coverage required by section 18(a) (as modified by section 61(a)), any senior securities representing indebtedness of Ares SBIC or another SBIC Subsidiary if that SBIC Subsidiary has issued indebtedness that is held or guaranteed by the SBA shall not be considered senior securities and, for purposes of the definition of “asset coverage” in section 18(h), shall be treated as indebtedness not represented by senior securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-12878 Filed 6-1-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77926; File No. SR-CBOE-2016-045]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend the Fees Schedule

May 26, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 16, 2016, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule. 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.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its Fees Schedule.<sup>3</sup> Specifically, the Exchange proposes to allow Market-Makers to designate a Trading Permit Holder with agency operations (“Order Flow Provider” or “OFP”) and Order Flow Providers to designate a Market-Maker for purposes of being able to take advantage of credits available under the Affiliate Volume Plan (“AVP”).

By way of background, the Exchange currently has in place various incentive programs that benefit “affiliated” Trading Permit Holders (“TPHs”). Particularly, under AVP, if a TPH Affiliate of a Market-Maker (including a Designated Primary Market-Maker (“DPM”) or Lead Market-Maker (“LMM”)) qualifies under the Volume Incentive Program (“VIP”), that Market-Maker will also qualify for a discount on that Market-Maker’s Liquidity Provider Sliding Scale (“Sliding Scale”) transaction fees (“Liquidity Provider Sliding Scale Credit”). More specifically, if a Market-Maker’s Affiliate reaches Tier 2, Tier 3 or Tier 4 of VIP, that Market-Maker will receive a Liquidity Provider Sliding Scale Credit of 10%, 20% or 30%, respectively. Additionally, if a Market-Maker’s Affiliate receives a credit under VIP, that Market-Maker will also receive a credit on its Market-Maker Trading Permit fees<sup>4</sup> corresponding to the VIP tier reached (10% Market-Maker Trading Permit fee credit for reaching Tier 2 of the VIP, 20% Market-Maker Trading Permit fee credit for reaching

<sup>3</sup> The Exchange initially filed the proposed fee change on May 2, 2016 (SR-CBOE-2016-044). On May 16, 2016, the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> This credit does not apply to Market-Maker Trading Permits used for appointments in SPX, SPXpm, RUT, VIX, OEX and XEO.

Tier 3 of the VIP, and 30% Market-Maker Trading Permit fee credit for reaching Tier 4 of the VIP) (“Access Credit”). “Affiliate” for purposes of AVP (*i.e.*, the Liquidity Provider Sliding Scale Credit and Access Credit) is currently defined as having at least 75% common ownership between the two entities as reflected on each entity’s Form BD, Schedule A.

The Exchange now proposes to expand the availability of the credits under AVP. Specifically, the Exchange proposes to allow any Market-Maker to designate an OFP as its “Appointed OFP” and any OFP to designate a Market-Maker to be its “Appointed Market-Maker” for purposes of qualifying for credits under AVP. TPHs would effectuate the designation by submitting a form to the Exchange.<sup>5</sup> The form would need to be submitted to the Exchange by 3:00 p.m. on the first business day of a month in order to be eligible to qualify for credits under AVP for that month. The Exchange would view transmittal of the completed form as acceptance of such an appointment and would only recognize one such designation for each party once every calendar month, which designation would remain [sic] automatically renew each month and remain in effect unless or until the Exchange receives an email from either party indicating that the appointment has been terminated.

The Exchange notes that the proposal would be available to all Market-Makers and OFPs, even those who already have an “Affiliate” under the current definition. More specifically, the proposed change would enable a Market-Maker without an Affiliate OFP (*i.e.*, an OFP with at least 75% common ownership between itself and that Market-Maker as reflected on each entity’s Form BD, Schedule A)—or with an Affiliate OFP—to enter into a relationship with an Appointed OFP. Similarly, an OFP with or without an Affiliate Market-Maker would be able to enter into a relationship with an Appointed Market-Maker. The proposed change increases opportunities for TPHs to qualify for credits under AVP, as it would enable TPHs that are not currently eligible for AVP (*i.e.*, doesn’t have an “Affiliate”) to avail themselves of AVP, as well as assist TPHs that are currently eligible for AVP (*i.e.*, has an Affiliate) to potentially achieve a higher AVP tier, thus qualifying for higher credits. The Exchange notes that a Market-Maker that has both an Affiliate OFP and Appointed OFP may only qualify based upon the volume of its

<sup>5</sup> The Appointed Affiliate Form may be submitted to [Registration@cboe.com](mailto:Registration@cboe.com).



Appointed OFP. Similarly, the volume of an OFP that has both an Affiliate Market-Maker and Appointed Market-Maker may only count towards qualifying the Appointed Market-Maker, not Affiliate Market-Maker, for credits under AVP (by virtue of the volume reaching qualifying VIP tiers). The Exchange believes enabling additional Market-Makers and OFPs to take advantage of the AVP credits will attract more volume and liquidity to the Exchange, which will benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery.

The Exchange lastly proposes to eliminate two references to the word “affiliated” in the Notes section of the AVP table. The Exchange believes that using the term “affiliated Market-Maker” in these locations may be confusing in light of the proposal to also allow “Appointed Market-Makers”. Additionally, the Exchange believes preceding “Market-Maker” with “affiliated” is unnecessary and as such proposes to delete it in these two instances.

## 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.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> 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. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>8</sup> which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders.

The Exchange believes the proposed change is reasonable because it would be available to all Market-Makers and OFPs and the decision to be designated

as an “Appointed OFP” or “Appointed Market-Maker” is completely voluntary and TPHs may elect to accept this appointment or not. Additionally, the proposed change increases opportunities for Market-Makers to qualify for credits under AVP, as it enables Market-Makers that are not currently eligible for AVP credits to avail themselves of AVP, as well as enables Market-Makers that are currently eligible for AVP to rely on volume that potentially achieves a higher VIP tier (and thus results in higher AVP credits). The Exchange also notes that other Exchanges have adopted a similar concept for their own affiliate-based incentive programs.<sup>9</sup>

The Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory because although only Market-Makers receive credits under AVP, Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. For example, Market-Makers have a number of obligations, including quoting obligations that other market participants do not have. Additionally, the Exchange notes that incentivizing an Appointed OFP to achieve higher tiers under VIP can result in greater customer liquidity, and the resulting increased volume benefits all market participants. The Exchange also notes that the credits under AVP would be available to all Appointed Market-Makers whose Affiliate or Appointed OFP qualify. The Exchange believes enabling additional Market-Makers to take advantage of the AVP credits (not just those with “Affiliates” under the current definition) will attract more volume and liquidity to the Exchange, which will benefit all market participants.

The Exchange believes it is equitable and not unfairly discriminatory to permit only one designation of an Appointed Market-Maker and Appointed OFP per calendar month because it imposes a measure of exclusivity allowing both parties to rely upon each other’s volume executed on the Exchange and potentially increase such volume to the benefit of all Exchange participants for that month. The Exchange also believes that while it encourages parties to rely upon each other’s volume, limiting the exclusivity to one month also gives the parties the

flexibility to make changes if the parties’ circumstances change (e.g., if one party terminates).

The Exchange lastly believes that eliminating the two references to the word “affiliated” in the Notes section of the AVP table reduces potential confusion, which removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

## 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. Specifically, the Exchange believes that the proposed changes are pro-competitive as they would increase opportunities for additional TPHs to qualify for AVP, which may increase intermarket and intramarket competition by incenting Appointed OFPs and Appointed Market-Makers to bring increased volume (including customer liquidity in order to reach higher VIP tiers, which results in higher AVP credits), and the resulting increased volume benefits all market participants (including Market-Makers and OFPs that do not have Affiliates or Appointed Market-Makers or OFPs) through increased trading opportunities and enhanced price discovery. The Exchange also notes that limiting AVP credits to Market-Makers does not impose an unnecessary or inappropriate burden on intermarket competition because Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. Market-Makers also have a number of obligations, including quoting obligations that other market participants do not have.

Additionally, the Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as stated above, the proposed changes are intended to promote competition and better improve the Exchange’s competitive position and make CBOE a more attractive marketplace in order to encourage market participants to bring increased volume to the Exchange. Further, the proposed changes only affect trading on CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such

<sup>9</sup> See NYSE MKT LLC, Amex Options Fee Schedule, Section D, Prepayment Program and Section E, Amex Customer Engagement (“ACE”) Program. See also Bats EDGX Exchange, Inc., Bats EDGX Options Exchange Fees Schedule, Definitions, “Appointed MM” and “Appointed OEF”.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

market participants are welcome to become CBOE market participants.

*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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and paragraph (f) of Rule 19b-4<sup>11</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2016-045 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-CBOE-2016-045. 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-CBOE-2016-045, and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016-12873 Filed 6-1-16; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-77942; File No. TP 16-8]

**Order Granting Limited Exemptions From Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M to SPDR Series Trust and SPDR Dorsey Wright Fixed Income Allocation ETF Pursuant to Exchange Act Rule 10b-17(b)(2) and Rules 101(d) and 102(e) of Regulation M**

May 27, 2016.

By letter dated May 27, 2016 (the "Letter"), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for SPDR Series Trust (the "Trust"), on behalf of the Trust, SPDR Dorsey Wright Fixed Income Allocation ETF (the "Fund"), any national securities exchange on or through which shares issued by the Fund ("Shares") may subsequently trade, State Street Global Markets, LLC (the "Distributor"), and persons or entities engaging in transactions in Shares (collectively, the "Requestors"), requested exemptions, or interpretive or no-action relief, from

Rule 10b-17 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 25,000 shares ("Creation Units").

The Trust is registered with the Securities and Exchange Commission ("Commission") under the Investment Company Act of 1940, as amended ("1940 Act"), as an open-end management investment company. The SPDR Dorsey Wright Fixed Income Allocation ETF will seek results that correspond generally to the performance, before fees and expenses, of the Dorsey Wright Fixed Income Allocation Index (the "Index"). In doing so, the Fund will, under normal circumstances, invest at least 80% (but typically substantially all) of its total assets in the four ETFs that comprise the Index (the "Underlying ETFs").<sup>1</sup> In light of the Index's composition, the Fund intends to operate as an "ETF of ETFs." Except for the fact that the Fund will operate as an ETF of ETFs, the Fund will operate in a manner substantially identical to the Underlying ETFs.

The Requestors represent, among other things, the following:

- Shares of the Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value ("NAV"), and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund will be listed and traded on NASDAQ Stock Market LLC or other exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act (the "Listing Exchange");
- All Underlying ETFs in which the Fund invests will either meet all conditions set forth in one or more of the ETF class relief letters,<sup>2</sup> will have

<sup>1</sup> At any given time, the underlying Index will be composed of four SPDR ETFs from a universe that currently consists of 21 eligible SPDR ETFs that each invest in a different sub-asset class in the fixed income market. While the Fund typically will invest substantially all of its assets in the four Underlying ETFs, the Fund may also invest in instruments not included in the Index, such as convertible securities, variable rate demand notes, commercial paper, structured notes, swaps, options and futures contracts, which the Fund may use in seeking performance that corresponds to its Index and in managing cash flows.

<sup>2</sup> See, e.g., Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

received individual relief from the Commission, will be able to rely on individual relief even though they are not named parties (for example, a no-action letter), or will be able to rely on applicable class relief for actively-managed ETFs;<sup>3</sup>

- All of the components of the Index will have publicly available last sale trade information;
- The intra-day proxy (or “indicative”) value of the Fund per share and the value of the Index will be publicly disseminated by a major market data vendor throughout the trading day;
- On each business day before the opening of business on the Listing Exchange, the Fund’s custodian, through the National Securities Clearing Corporation, will make publicly available the list of the names and the numbers of securities of the Fund’s portfolio that will be applicable that day to creation and redemption requests;
- The Listing Exchange or other market information provider will disseminate (i) continuously every 15 seconds throughout the trading day, through the facilities of the consolidated tape, the market value of a Share, and (ii) every 15 seconds throughout the trading day, a calculation of the intra-day indicative value of a Share;
- The Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Requestors believe that arbitrageurs are expected to take advantage of price variations between the Fund’s market price and its NAV;
- The arbitrage mechanism will be facilitated by the transparency of the Fund’s portfolio and the availability of the intra-day indicative value, the liquidity of securities held by the Fund, and the ability to acquire such

Chance US LLP (October 24, 2006) regarding class relief for exchange-traded index funds; Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (November 21, 2005); Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006) regarding commodity-based investment vehicles; Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie, Farr & Gallagher LLP (April 9, 2007) regarding class relief for fixed income exchange traded funds; or Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007) regarding class relief for combination exchange-traded funds.

<sup>3</sup> See Division of Market Regulation Staff Legal Bulletin No. 9, as revised on September 10, 2010, with respect to Rules 101 and 102 of Regulation M, and Securities Exchange Act Rel. No. 67215 (June 19, 2012), with respect to Rule 10b-17.

securities, as well as arbitrageurs’ ability to create workable hedges; and

- A close alignment between the market price of Shares and the Fund’s NAV is expected.

#### Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.<sup>4</sup> However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares and the Fund as described in more detail below.

#### Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any “distribution participant” and its “affiliated purchasers” from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines “distribution” to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Unit size aggregations of the Shares of the Fund and that a close alignment between the market price of Shares and the Fund’s NAV is expected, the Commission finds that it is appropriate in the public interest and

<sup>4</sup> While ETFs operate under exemptions from the definitions of “open-end company” under Section 5(a)(1) of the 1940 Act and “redeemable security” under Section 2(a)(32) of the 1940 Act, the Fund and its securities do not meet those definitions.

consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the Fund, thus permitting persons participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.<sup>5</sup>

#### Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the Fund and that a close alignment between the market price of Shares and the Fund’s NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

#### Rule 10b-17

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b-17(b). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust a conditional exemption from Rule 10b-17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in

<sup>5</sup> Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an “attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period” within the meaning of Rule 101 of Regulation M and, therefore, would not violate that rule.

adopting Rule 10b-17 will not be implicated.<sup>6</sup>

### Conclusion

*It is hereby ordered*, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

*It is further ordered*, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

*It is further ordered*, pursuant to Rule 10b-17(b)(2), that the Trust, based on the representations and the facts presented in the Letter, and subject to the conditions below, is exempt from the requirements of Rule 10b-17 with respect to transactions in the Shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Listing Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Listing Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemptive relief shall discontinue transactions involving the Shares of the Fund, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the

<sup>6</sup> We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Further, the Commission finds, based upon the representations in the Letter, that the provision of the notices as described in the Letter would not constitute a manipulative or deceptive device or contrivance comprehended within the purpose of Rule 10b-17.

Requestors and, consistent with all preceding letters, particularly with respect to the close alignment between the market price of Shares and the Fund's NAV. In addition, persons relying on this exemptive relief are directed to the antifraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemptive relief.

This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-13041 Filed 6-1-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77941; File No. SR-NYSEArca-2016-63]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of BlackRock Government Collateral Pledge Unit Under NYSE Arca Equities Rule 8.600

May 27, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 19, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>7</sup> 17 CFR 200.30-3(a)(6) and (9).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): BlackRock Government Collateral Pledge Unit under NYSE Arca Equities Rule 8.600 [sic]. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the following under NYSE Arca Equities Rule 8.600,<sup>4</sup> which governs the listing and trading of Managed Fund Shares:<sup>5</sup> BlackRock

<sup>4</sup> The Commission has previously approved listing and trading on the Exchange of actively managed funds under Rule 8.600. *See, e.g.*, Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR-NYSEArca-2011-95) (order approving listing and trading of PIMCO Total Return Exchange Traded Fund); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR-NYSEArca-2012-09) (order approving listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

<sup>5</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock

Government Collateral Pledge Unit (“Fund”). The Fund is a series of the BlackRock Collateral Trust (the “Trust”), a Delaware statutory trust.<sup>6</sup> BlackRock Fund Advisors is the investment advisor for the Fund (“Adviser”). State Street Bank and Trust Company (“State Street”) is the administrator, custodian and transfer agent for the Fund. BlackRock Investments, LLC will be the Fund’s distributor (“Distributor”).

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>7</sup> In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed

index, fixed income securities index or combination thereof.

<sup>6</sup> The Trust is registered under the 1940 Act. On April 7, 2016, the Trust filed with the Commission its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”) and the 1940 Act relating to the Fund (File Nos. 333-210648 and 811-23154) (the “Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust and the Adviser (as defined below) under the 1940 Act. See Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812-13601) (“Exemptive Order”). The Fund will be offered in reliance upon the Exemptive Order issued to the Trust and the Adviser.

<sup>7</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. The Exchange represents that the Adviser and its related personnel are subject to Investment Advisers Act Rule 204A-1. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

to prevent the use and dissemination of material nonpublic information regarding the open-end fund’s portfolio. The Adviser is not registered as a broker-dealer but is affiliated with two broker-dealers. The Adviser has implemented and will maintain a fire wall with respect to its affiliated broker-dealers regarding access to information concerning the composition and/or changes to the Fund’s portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

BlackRock Government Collateral Pledge Unit  
Principal Investments

According to the Registration Statement, the Fund’s investment objective will be to seek to provide as high a level of current income as is consistent with liquidity and minimum volatility of principal. The Fund will seek to achieve its investment objective by investing, under normal circumstances,<sup>8</sup> at least 80% of its net assets in a portfolio of U.S. dollar-denominated short-term government securities and other money market securities eligible for investment by U.S. government money market funds that seek to maintain a stable net asset value (including indirect investments through the “Underlying Funds”, as defined below).

Under normal circumstances, the Fund intends to invest a substantial portion of its assets in the following government money market funds (each, an “Underlying Fund” and collectively, the “Underlying Funds”), which principally invest in short-term U.S. Treasury bills, notes and other obligations issued or guaranteed as to principal and interest by the U.S.

<sup>8</sup> The term “under normal circumstances” includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income securities markets or the financial markets generally; circumstances under which the Fund’s investments are made for temporary defensive purposes; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Government or its agencies or instrumentalities, and repurchase agreements secured by such obligations or cash;<sup>9</sup> FedFund and T-Fund (each, a series of BlackRock Liquidity Funds); and BlackRock Premier Government Institutional Fund and BlackRock Select Treasury Strategies Institutional Fund (each, a series of Funds For Institutions Series). The Adviser may add, eliminate or replace any or all Underlying Funds at any time. Any additions to or replacements for the Underlying Funds will also be government money market funds with substantially similar investment characteristics as those described herein applicable to the Underlying Funds. The Adviser or its affiliates may advise the Underlying Funds. The Fund generally will allocate and reallocate its assets among the Underlying Funds on a monthly basis on an approximate *pro rata* basis based on the amount of net assets of each Underlying Fund, subject to minimum investment amounts or other constraints on the Underlying Funds.

According to the Registration Statement, the Underlying Funds invest in securities maturing in 397 days (13 months) or less (with certain exceptions) and their portfolios will have a dollar-weighted average maturity of 60 days or less and a dollar-weighted average life of 120 days or less.

The Fund and certain Underlying Funds may invest in various types of U.S. government obligations. U.S. government obligations are a type of bond and include securities issued or guaranteed as to principal and interest by the U.S. government, its agencies or instrumentalities. Payment of principal and interest on U.S. government obligations (i) may be backed by the full faith and credit of the United States or (ii) may be backed solely by the issuing or guaranteeing agency or instrumentality itself (as with Federal National Mortgage Association (“Fannie Mae”), Federal Home Loan Mortgage Corporation (“Freddie Mac”) and Federal Home Loan Bank (“FHLB”) notes). In the latter case, the Fund or an Underlying Fund must look principally to the agency or instrumentality issuing or guaranteeing the obligation for ultimate repayment, which agency or instrumentality may be privately owned.

The Fund and the Underlying Funds may invest in variable and floating rate instruments.

<sup>9</sup> Each Underlying Fund is a “government money market fund,” as defined in Rule 2a-7 under the 1940 Act and seeks to maintain a stable NAV of \$1.00. The Fund, however, will not be a money market fund and will not seek to maintain a stable NAV of \$1.00.

The Fund and the Underlying Funds may transact in securities on a when-issued, delayed delivery or forward commitment basis. The purchase or sale of securities on a when-issued or delayed delivery basis or through a forward commitment involves the purchase or sale of securities at an established price with payment and delivery taking place in the future.

The Fund and the Underlying Funds may invest in repurchase agreements that are secured by either obligations issued or guaranteed as to principal and interest by the U.S. government or agencies or instrumentalities, or by cash.

The securities purchased by the Fund will comply with the quality and eligibility requirements of Rule 2a-7 under the 1940 Act. The securities purchased by the Underlying Funds will comply with all requirements of Rule 2a-7 and other rules of the Commission applicable to money market funds that seek to maintain a stable net asset value per share (“NAV”). The Fund itself will invest only in money market securities eligible for investment for funds that comply with Rule 2a-7 but will not be subject to other requirements of Rule 2a-7 applicable to money market funds that seek to maintain a stable NAV.

#### Other Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in the securities and financial instruments described above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund and the Underlying Funds may also invest in certain U.S. government obligations other than those referenced in Principal Investments above, namely Treasury receipts where the principal and interest components are traded separately under the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program.

The Fund and certain Underlying Funds may invest in reverse repurchase agreements.

The Fund may invest in the securities of other investment companies (including money market funds) to the extent permitted by law, regulation, exemptive order or Commission staff guidance.

#### Investment Restrictions

The Fund will be classified as “diversified.”<sup>10</sup> With respect to 75% of the Fund’s total assets, a “diversified”

<sup>10</sup> The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

fund is limited by the 1940 Act such that it does not invest more than 5% of its total assets in securities of any one issuer and does not acquire more than 10% of the outstanding voting securities of any one issuer (excluding cash and cash items, government securities, and securities of other investment companies). The remaining 25% of the Fund’s total assets may be invested in a single issuer or a number of issuers.

The Fund intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a regulated investment company for purposes of the U.S. Internal Revenue Code of 1986, as amended.<sup>11</sup>

The Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). Each Underlying Fund may invest up to an aggregate amount of 5% of its net assets in illiquid securities. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund’s net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.<sup>12</sup>

The Fund will not invest in futures, options, swaps or forward contracts.

The Fund’s investments will be consistent with the Fund’s investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the

<sup>11</sup> 26 U.S.C. 851.

<sup>12</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding “Restricted Securities”); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund’s portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2Xs and 3Xs) of the Fund’s primary broad-based securities benchmark index (as defined in Form N-1A).<sup>13</sup>

#### Net Asset Value

According to the Registration Statement, the NAV for the Fund’s Shares will generally be calculated as of 12:00 p.m., Eastern time, on each day the New York Stock Exchange (“NYSE”) is open for trading. Valuation of securities held by the Fund will be as follows.

Shares of the Underlying Funds normally will be valued at fair value based on their NAV from the prior business day, which is the most recent observable valuation of the Underlying Funds as of the time the NAV for the Fund’s Shares is determined [sic]

Fixed-income securities normally will be valued based on current bid-side market quotations (if readily available), last available bid prices, or evaluated prices as of 12:00 p.m., Eastern time supplied by the Fund’s approved independent third-party pricing services, each in accordance with policies and procedures approved by the Board (the “Valuation Procedures”). The amortized cost method of valuation may be used with respect to debt obligations with sixty days or less remaining to maturity unless BlackRock determines in good faith that such method does not represent fair value. Certain fixed-income investments may be valued based on valuation models that consider the estimated cash flows of each tranche of the entity, establish a benchmark yield and develop an estimated tranche-specific spread to the benchmark yield based on the unique attributes of the tranche.

Variable and floating rate instruments, repurchase agreements and reverse repurchase agreements will be valued at prices supplied by approved pricing services which is generally based on bid-side quotations.

Prices obtained from independent third-party pricing services, broker-dealers or market makers to value the Fund’s securities and other assets and liabilities will be based on information available at the time the Fund values its assets and liabilities.

In the event that application of the methods of valuation discussed above result in a price for a security which is deemed not to be representative of the

<sup>13</sup> The Fund’s broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund’s first full calendar year of performance.

fair market value of such security, the security will be valued by, under the direction of or in accordance with a method approved by the Board, and in accordance with the 1940 Act, as reflecting fair value.

When market quotations are not readily available or are believed in good faith by BlackRock to be unreliable, the Fund's investments will be valued at fair value ("Fair Value Assets"). Fair Value Assets will be valued by BlackRock in accordance with the Valuation Procedures. BlackRock may reasonably conclude that a market quotation is not readily available or is unreliable if, among other things, a security or other asset or liability does not have a price source due to its complete lack of trading, if BlackRock believes in good faith that a market quotation from a broker-dealer or other source is unreliable (*e.g.*, where it varies significantly from a recent trade, or no longer reflects the fair value of the security or other asset or liability subsequent to the most recent market quotation), or where the security or other asset or liability is only thinly traded or due to the occurrence of a significant event subsequent to the most recent market quotation. For this purpose, a "significant event" is deemed to occur if BlackRock determines, in its reasonable business judgment, that an event has occurred after the close of trading for an asset or liability but prior to or at the time of pricing the Fund's assets or liabilities, and that the event is likely to cause a material change to the closing market price of the assets or liabilities held by the Fund.

BlackRock, with input from the BlackRock Investment Strategy Group, will submit its recommendations regarding the valuation and/or valuation methodologies for Fair Value Assets to BlackRock's Valuation Committee. The BlackRock Valuation Committee may accept, modify or reject any recommendations. In addition, the Fund's accounting agent periodically endeavors to confirm the prices it receives from all third-party pricing services, index providers and broker-dealers, and, with the assistance of BlackRock, to regularly evaluate the values assigned to the securities and other assets and liabilities of the Fund. The pricing of all Fair Value Assets is subsequently reported to and, where appropriate, ratified by the Board. When determining the price for a Fair Value Asset, the BlackRock Valuation Committee (or BlackRock's Pricing Group) will seek to determine the price that the Fund might reasonably expect to receive upon the current sale of that

asset or liability in an arm's-length transaction on the date on which the assets or liabilities are being valued, and does not seek to determine the price that the Fund might expect to receive for selling the asset, or the cost of extinguishing a liability, at a later time or if it holds the asset or liability to maturity. Fair value determinations will be based upon all available factors that the BlackRock Valuation Committee (or BlackRock's Pricing Group) deems relevant at the time of the determination, and may be based on analytical values determined by BlackRock using proprietary or third-party valuation models.

Fair value represents a good faith approximation of the value of an asset or liability. When determining the fair value of an asset, one or more of a variety of fair valuation methodologies may be used (depending on certain factors, including the asset type). For example, the asset may be priced on the basis of the original cost of the investment or, alternatively, using proprietary or third-party models (including models that rely upon direct portfolio management pricing inputs and which reflect the significance attributed to the various factors and assumptions being considered). Prices of actual, executed or historical transactions in the relevant asset and/or liability (or related or comparable assets and/or liabilities) or, where appropriate, an appraisal by a third-party experienced in the valuation of similar assets and/or liabilities, may also be used as a basis for establishing the fair value of an asset or liability.

#### Creation and Redemption of Shares

According to the Registration Statement, the Trust will issue and sell Shares of the Fund only in Creation Units of 50,000 Shares (though this number may change from time to time, including prior to the listing of the Fund) on a continuous basis through the Distributor or its agent, without a sales load, at a price based on the Fund's NAV next determined after receipt, on any business day, of an order received by the Distributor or its agent in proper form. On days when the Exchange or the bond markets close earlier than normal, the Fund may require orders to be placed earlier in the day.

The consideration for purchase of Creation Units of the Fund will generally be cash. However, in some cases the consideration consists of an in-kind deposit of a designated portfolio of securities (including any portion of such securities for which cash may be substituted) ("Deposit Securities") and the Cash Component computed as

described below. Together, the Deposit Securities and the Cash Component will constitute the "Fund Deposit," which will be applicable (subject to possible amendment or correction) to creation requests received in proper form. The Fund Deposit represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The "Cash Component" will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the "Deposit Amount," which will be an amount equal to the market value of the Deposit Securities, and serve to compensate for any differences between the NAV per Creation Unit and the Deposit Amount.

The Adviser will make available through the NSCC on each business day prior to the opening of business on the Exchange, the list of names and the required number or par value of each Deposit Security and the amount of the Cash Component to be included in the current Fund Deposit (based on information as of the end of the previous business day for the Fund). Such Fund Deposit will be applicable, subject to any adjustments as described below, to purchases of Creation Units of Shares of the Fund until the Fund's deadline for the submission of purchase orders (the Fund's "Cutoff Time").

The Fund reserves the right to permit or require the substitution of a "cash in lieu" amount to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through the Depository Trust Company ("DTC") or the clearing process (as discussed below) or that the Authorized Participant is not able to trade due to a trading restriction. The Fund also reserves the right to permit or require a "cash in lieu" amount in certain circumstances, including circumstances in which the delivery of the Deposit Security by the "Authorized Participant" (as defined below) would be restricted under applicable securities or other local laws or in certain other situations. As noted above, Creation Units currently will be available only for cash purchases.

To be eligible to place orders with the Distributor and to create a Creation Unit of the Fund, an entity must be: (i) A "Participating Party," *i.e.*, a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC (the "Clearing Process"), a clearing agency that is registered with the Commission, or (ii) a DTC Participant, and must have executed an agreement with the Distributor, with respect to creations



and redemptions of Creation Units (“Authorized Participant Agreement”). A Participating Party or DTC Participant who has executed an Authorized Participant Agreement is referred to as an “Authorized Participant.”

Creation Units may be purchased only by or through an Authorized Participant.

To initiate an order for a Creation Unit, an Authorized Participant must submit to the Distributor or its agent an irrevocable order to purchase Shares of the Fund, in proper form, generally before 12:00 p.m., Eastern time on any business day to receive that day’s NAV.

Shares of the Fund may be redeemed by Authorized Participants only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor or its agent and only on a business day.

The Fund generally will redeem Creation Units solely for cash; however, the Fund reserves the right to distribute securities in-kind as payment for Creation Units being redeemed.

Redemption requests for Creation Units of the Fund must be submitted to the Distributor by or through an Authorized Participant. An Authorized Participant must submit an irrevocable request to redeem shares of the Fund generally before 12:00 p.m., Eastern time on any business day in order to receive that day’s NAV.

The Adviser will make available through the NSCC, prior to the opening of business on the Exchange on each business day, the designated portfolio of securities (including any portion of such securities for which cash may be substituted) that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (“Fund Securities”), and an amount of cash (the “Cash Amount”). Such Fund Securities and the corresponding Cash Amount (each subject to possible amendment or correction) are applicable in order to effect redemptions of Creation Units of the Fund until the Fund’s Cutoff Time. Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units.

If redemptions are not paid in cash, the redemption proceeds for a Creation Unit generally will consist of Fund Securities, plus the Cash Amount, which is an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after the receipt of a redemption request in proper form, and

the value of Fund Securities, less a redemption transaction fee.

The right of redemption may be suspended or the date of payment postponed with respect to the Fund: (i) For any period during which the Exchange is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the Exchange is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the shares of the Fund’s portfolio securities or determination of its net asset value is not reasonably practicable; or (iv) in such other circumstance as is permitted by the Commission.

#### Availability of Information

The Fund’s Web site ([www.blackrock.com](http://www.blackrock.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund’s Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day’s reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”),<sup>14</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund’s calculation of NAV at the end of the business day.<sup>15</sup>

On a daily basis, the Adviser will disclose on the Fund’s Web site the following information regarding each portfolio holding of the Fund and the Underlying Funds, as applicable to the type of holding: Ticker symbol, CUSIP

<sup>14</sup> The Bid/Ask Price of the Fund’s Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>15</sup> Under accounting procedures to be followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund’s or Underlying Fund’s portfolio. The Web site information will be publicly available at no charge.

Investors can also obtain the Trust’s Statement of Additional Information (“SAI”), the Fund’s Shareholder Reports, and Form N-CSR and Form N-SAR, filed twice a year. The Trust’s SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission’s Web site at [www.sec.gov](http://www.sec.gov). Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (“CTA”) high-speed line. Price information for the Underlying Funds, other money market funds, STRIPS, U.S. government obligations, variable and floating rate instruments, repurchase agreements and reverse repurchase agreements will be available from major market data vendors. In addition, the Portfolio Indicative Value (“PIV”), as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.<sup>16</sup> The dissemination of the PIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and provide a close estimate of that value throughout the trading day.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to

<sup>16</sup> Currently, it is the Exchange’s understanding that several major market data vendors display and/or make widely available PIVs taken from CTA or other data feeds.

halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached.<sup>17</sup> Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted [sic]

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3<sup>18</sup> under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio of the Fund will be made available to all market participants at the same time.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well

as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>19</sup>

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets or other entities that are members of the Intermarket Surveillance Group ("ISG"),<sup>20</sup> and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued

<sup>19</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>20</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

listing requirements for listing the Shares of the Fund on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will generally be calculated as of 12:00 p.m., Eastern time, on each day the NYSE is open for trading.

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>21</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See NYSE Arca Equities Rule 7.12.

<sup>18</sup> 17 CFR 240.10A-3.

mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a fire wall with respect to its affiliated broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets or other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Price information for the Underlying Funds, investment company

securities, STRIPS, U.S. government obligations, variable and floating rate instruments, repurchase agreements, and reverse repurchase agreements will be available from major market data vendors. In addition, the PIV, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds U.S. government securities and other money market securities that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

#### *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 purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that

principally holds U.S. government securities and other money market securities as discussed above, which will enhance competition among market participants, to the benefit of investors and the marketplace.

#### *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**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2016-63 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-2016-63. 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-2016-63 and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2016-13040 Filed 6-1-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77923; File No. SR-FINRA-2016-016]

### 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 26, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 19, 2016, 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,<sup>3</sup> 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 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 June 10, 2016, until December 9, 2016.

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 December 9, 2016, the amendments set forth in File No. SR-FINRA-2011-058 ("Tier Size Pilot" or "Pilot"), which currently are scheduled to expire on June 10, 2016.<sup>4</sup>

The Tier Size Pilot was filed with the SEC on October 6, 2011,<sup>5</sup> to amend the minimum quotation sizes (or "tier sizes") for OTC Equity Securities.<sup>6</sup> The

<sup>4</sup> See Securities Exchange Act Release No. 76519 (November 24, 2015), 80 FR 75155 (December 1, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-051); 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).

<sup>5</sup> 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).

<sup>6</sup> "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;

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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> FINRA reviewed the 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).

FINRA further extended the Pilot period until June 10, 2016.<sup>10</sup> The purpose of this filing is to extend the operation of the Tier Size Pilot until December 9, 2016, to provide FINRA with additional time to finalize its

provided, however, that the term OTC Equity Security shall not include any Restricted Equity Security. See FINRA Rule 6420.

<sup>7</sup> FINRA ceased collecting Pilot data for submission to the Commission on February 13, 2015.

<sup>8</sup> 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").

<sup>9</sup> 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).

<sup>10</sup> 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); Securities Exchange Act Release No. 74927 (May 12, 2015), 80 FR 28327 (May 18, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-010); Securities Exchange Act Release No. 75639 (August 7, 2015), 80 FR 48615 (August 13, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-028); and Securities Exchange Act Release No. 76519 (November 24, 2015), 80 FR 75155 (December 1, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-051).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

proposal 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 June 10, 2016.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>11</sup> which 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.<sup>12</sup> 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 until December 9, 2016, is consistent with the Act in that it would provide the Commission and FINRA with additional time to finalize its proposal with regard to the Tier Size Pilot.

### 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<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>16</sup> 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 operative upon filing.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2016-016 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> 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).

and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2016-016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-2016-016 and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Brent J. Fields,**

Secretary.

[FR Doc. 2016-12871 Filed 6-1-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14728 and #14729]

### Montana Disaster #MT-00095

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Montana (FEMA-4271-DR), dated 05/24/2016.

*Incident:* Severe Winter Storm and Straight-line Winds.

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

<sup>12</sup> 15 U.S.C. 78o-3(b)(11).

*Incident Period:* 04/15/2016 through 04/16/2016.

*Effective Date:* 05/24/2016.

*Physical Loan Application Deadline Date:* 07/25/2016.

*Economic Injury (EIDL) Loan Application Deadline Date:* 02/24/2017.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 05/24/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Glacier, Liberty, Pondera, Teton, Toole.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere .....	2.625
<i>For Economic Injury:</i>	
Non-Profit Organizations Without Credit Available Elsewhere .....	2.625

The number assigned to this disaster for physical damage is 14728B and for economic injury is 14729B.

(Catalog of Federal Domestic Assistance Number 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2016-12990 Filed 6-1-16; 8:45 am]

**BILLING CODE 8025-01-P**

**SOCIAL SECURITY ADMINISTRATION**

[Docket No. SSA-2016-0005]

**Supplementary Agreement Amending the Agreement on Social Security Between the United States and the Czech Republic; Entry Into Force**

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice.

**SUMMARY:** The Acting Commissioner of Social Security gives notice that a supplementary agreement coordinating the United States (U.S.) and the Czech Republic social security programs will enter into force on May 1, 2016. The original agreement with the Czech Republic was signed on September 7, 2007. The intent of the original agreement was that workers covered exclusively under U.S. laws while working in the Czech Republic would be exempt from the Czech health insurance contributions. A change in Czech law after the signing of the original 2007 agreement caused these workers to be liable for Czech health insurance taxes. This result was inconsistent with the purpose of the totalization agreement to eliminate duplicate taxation as permitted by 42 U.S.C. 433 and 26 U.S.C. 3101(c).

The supplementary agreement exempts a worker subject exclusively to U.S. laws from contributing to the Czech health insurance system. The supplementary agreement achieves this by placing the new Czech health insurance law, the Act on Public Health, within the scope of the 2007 U.S.-Czech Agreement.

Individuals who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Programs, Post Office Box 17741, Baltimore, MD 21235-7741 or visit the Social Security Web site at [www.socialsecurity.gov/international](http://www.socialsecurity.gov/international).

Dated: May 24, 2016.

**Carolyn Colvin,**

*Acting Commissioner of Social Security.*

[FR Doc. 2016-13009 Filed 6-1-16; 8:45 am]

**BILLING CODE 4191-02-P**

**DEPARTMENT OF STATE**

[Public Notice: 9595]

**Request for Comments and Suggestions for Environmental Cooperation Pursuant to the United States-Bahrain Memorandum of Understanding on Environmental Cooperation**

**ACTION:** Notice of preparation of the 2016-2019 United States-Bahrain Environmental Cooperation Plan of Action (the "Second POA") and request for comments.

**SUMMARY:** The Department of State invites the members of the public, including non-governmental

organizations (NGOs), educational institutions, private sector enterprises, and other interested persons, to submit written comments or suggestions regarding items for inclusion in a new Plan of Action for implementing the United States-Bahrain Memorandum of Understanding on Environmental Cooperation (MOU), signed on September 14, 2004. In preparing such comments or suggestions, we encourage submitters to refer to: (1) The United States-Bahrain MOU, (2) the United States-Bahrain Free Trade Agreement (FTA) Environment Chapter, (3) the Environmental Review of the FTA, and (4) 2006-2008 Plan of Action, dated October 1, 2006 (the "First POA"). These documents are available at: <http://www.state.gov/e/oes/eqt/trade/bahrain/>.

**DATES:** To be assured of timely consideration, all written comments or suggestions are requested no later than July 5, 2016.

**ADDRESSES:** Written comments or suggestions may be submitted in any of the following three ways:

- You may view and comment on this notice by going to <http://www.regulations.gov#!home> and searching on docket number: DOS-2016-0039. Please note that comments you submit are not private and will not be edited to remove identifying or contact information. The State Department cautions against including any information that you would not want publicly disclosed.
- You may also send your comment by electronic mail at [CanuelET@state.gov](mailto:CanuelET@state.gov) with the subject line "U.S.-Bahrain Plan of Action."
- You may mail your comment to Edward T. Canuel, Office of Environmental Quality and Transboundary Issues (OES/EQT), 2201 C Street NW., Suite 2726, U.S. Department of State, Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:** Edward T. Canuel, telephone (202) 647-4828

**SUPPLEMENTARY INFORMATION:** United States-Bahrain MOU

The United States and Bahrain negotiated the MOU in parallel with the United States-Bahrain Free Trade Agreement. In Paragraph 3 of the MOU, the Governments state that they will develop and update, as appropriate, a POA. Priority projects for environmental cooperation in POAs are guided by the following subject areas set forth in the Annex to the MOU: (i) Environmental law and regulations; (ii) environmental impact assessments; (iii) environmental incentives/voluntary programs; (iv) air

quality; (v) public participation in environmental protection; (vi) protection of water resources; (vii) coastal protection and preservation of marine resources; (viii) protection of endangered species; and (ix) environmental technology and business.

Disclaimer: This Public Notice is a request for comments and suggestions, and is not a request for applications. No granting of money is directly associated with this request for suggestions for the Second POA. There is no expectation of resources or funding associated with any comments or suggestions for the Second POA.

Dated: May 26, 2016.

**Deborah Klepp,**

*Director, Office of Environmental Quality and Transboundary Issues, Department of State.*

[FR Doc. 2016-13056 Filed 6-1-16; 8:45 am]

**BILLING CODE 4710-09-P**

## DEPARTMENT OF STATE

[Public Notice: 9590]

### Culturally Significant Objects Imported for Exhibition Determinations: “Watteau’s Soldiers: Scenes From Military Life in 18th Century France” Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition “Watteau’s Soldiers: Scenes from Military Life in 18th Century France,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, New York, from on about July 12, 2016, until on or about October 2, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the imported objects, contact the Office

of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State, L/PPD, SA-5, Suite 5H03, Washington, DC 20522-0505.

Dated: May 24, 2016.

**Mark Taplin,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2016-12981 Filed 6-1-16; 8:45 am]

**BILLING CODE 4710-05-P**

## DEPARTMENT OF STATE

[Public Notice: 9591]

### Review of the Designation as a Foreign Terrorist Organization of Islamic Movement of Uzbekistan, aka Islamic Movement of Turkestan, aka Islamic Party of Turkestan, aka Harakut Islamiyyah, aka Harakut ul Islamiyyah Ozbekistan, aka Islamic Movement

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (“INA”), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: May 23, 2016.

**John F. Kerry,**

*Secretary of State, Department of State.*

[FR Doc. 2016-12980 Filed 6-1-16; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9592]

### In the Matter of the Designation of Jama’at ul Dawa al-Qu’ran, aka JDQ, aka Jamaat al Dawa ila al Sunnah, aka Jamaat ud Dawa il al Quran al Sunnah, aka Jamaat ul Dawa al Quran, aka Jamaat-ud-Dawa al Quran wal Sunnah, aka Jama’at Da’wa al-Sunnat, aka Jama’at al-Da’wa ala-l-Quran wa-l-Sunna, aka Society for the Call/ Invitation to the Quran and the Sunna, aka JDQS, aka Salafi Group, aka Jama’at ad-Da’wa as-Salafiya wa-l-Qital, aka Jamiat al-Dawa al-Quran wal-Sunna, aka Assembly for the Call of the Koran and the Sunnah as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with sec. 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Jama’at ul Dawa al-Qu’ran, also known as JDQ, also known as Jamaat al Dawa ila al Sunnah, also known as Jamaat ud Dawa il al Quran al Sunnah, also known as Jamaat ul Dawa al Quran, also known as Jamaat-ud-Dawa al Quran wal Sunnah, also known as Jama’at Da’wa al-Sunnat, also known as Jama’at al-Da’wa ala-l-Quran wa-l-Sunna, also known as Society for the Call/Invitation to the Quran and the Sunna, also known as JDQS, also known as Salafi Group, also known as Jama’at ad-Da’wa as-Salafiya wa-l-Qital, also known as Jamiat al-Dawa al-Quran wal-Sunna, also known as Assembly for the Call of the Koran and the Sunnah committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in sec. 10 of Executive Order 13224 that “prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,” I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.



Dated: May 6, 2016.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2016-12972 Filed 6-1-16; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9589]

### Culturally Significant Objects Imported for Exhibition Determinations: “Picasso: The Line” Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition “Picasso: The Line,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Menil Collection, Houston, Texas, from on or about September 16, 2016, until on or about January 8, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State, L/PP, SA-5, Suite 5H03, Washington, DC 20522-0505.

Dated: May 24, 2016.

**Mark Taplin,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2016-12983 Filed 6-1-16; 8:45 am]

**BILLING CODE 4710-05-P**

## DEPARTMENT OF STATE

[Public Notice: 9593]

### In the Matter of the Designation of Tariq Gidar Group, aka TGG, aka Tehrik-e-Taliban (TTP)-Tariq Gidar Group, aka Tehreek-i-Taliban Pakistan (TTP) Geedar Group, aka Tariq Geedar Group, aka Commander Tariq Afridi Group, aka Tariq Afridi Group, aka Tariq Gidar Afridi Group, aka The Asian Tigers as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with sec. 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Tariq Gidar Group, also known as TGG, also known as Tehrik-e-Taliban (TTP)-Tariq Gidar Group, also known as Tehreek-i-Taliban Pakistan (TTP) Geedar Group, also known as Tariq Geedar Group, also known as Commander Tariq Afridi Group, also known as Tariq Afridi Group, also known as Tariq Gidar Afridi Group, also known as The Asian Tigers committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in sec. 10 of Executive Order 13224 that “prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,” I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: May 10, 2016.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2016-12985 Filed 6-1-16; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9594]

### Determination and Certification Under Section 40A of the Arms Export Control Act

Pursuant to section 40A of the Arms Export Control Act (22 U.S.C. 2781), and Executive Order 11958, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with United States antiterrorism efforts: Eritrea, Iran, Democratic People’s Republic of Korea (DPRK, or North Korea), Syria, Venezuela.

This determination and certification shall be transmitted to the Congress and published in the **Federal Register**.

Dated: May 10, 2016.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2016-12976 Filed 6-1-16; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2016-0040]

#### Notice and Request for Comment on Benefit-Cost Analysis Guidance for Rail Projects

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).  
**ACTION:** Notice and request for comments.

**SUMMARY:** Section 11313(b) of the Fixing America’s Surface Transportation (FAST) Act, Public Law 114-94 (December 4, 2015), requires the Secretary of Transportation (Secretary) to “enhance the usefulness of assessments of benefits and costs for intercity passenger rail and freight rail projects.” As directed by Section 11313, FRA is issuing benefit-cost analysis (BCA) guidance (BCA Guidance) to fulfill these requirements and is requesting comments on the BCA Guidance. The BCA Guidance is available at <https://www.fra.dot.gov/Page/P0940>.

**DATES: Written Comments:** Written comments on the BCA Guidance must be received by August 1, 2016.

**ADDRESSES: Comments:** Comments related to Docket Number FRA-2016-0040 may be submitted by any of the following methods:

- **Online:** Comments should be filed at the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the

online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* 202-493-2251.

*Instructions:* All submissions must include the agency name and the docket number for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Lawrence, Office of Railroad Policy and Development, Federal Railroad Administration, 1200 New Jersey Ave. SE., Washington, DC 20590, (202) 493-1376.

**SUPPLEMENTARY INFORMATION:** Section 11313(b) of the FAST Act provides that, not later than 180 days after the date of enactment of the FAST Act, the Secretary must enhance the usefulness of assessments of benefits and costs for intercity passenger rail and freight rail projects by: (1) Providing ongoing guidance and training on developing benefit and cost information for rail projects; (2) providing more direct and consistent requirements for assessing benefits and costs across transportation funding programs, including the appropriate use of discount rates; (3) requiring applicants to clearly communicate the methodology used to calculate the project benefits and costs; and (4) ensuring that applicants receive clear and consistent guidance on values to apply for key assumptions used to estimate potential project benefits and costs.

The BCA Guidance addresses the four requirements specified in the FAST Act and is intended to provide a consistent approach for completing a BCA for intercity passenger rail and freight rail project proposals.

In addition to serving as a valuable tool for defining and narrowing investment alternatives, BCAs are also increasingly a prerequisite to receive financial assistance under Federal investment programs, including those that DOT administers. For example, the two competitive railroad infrastructure improvement grant programs authorized in the FAST Act specifically require the Secretary to consider BCA as a project selection criterion (Section 11301,

Consolidated Rail Infrastructure and Safety Improvements; and Section 11302, Federal-State Partnership for State of Good Repair). Moreover, two grant programs administered by the Office of the Secretary that contain rail project eligibilities—the Transportation Investment Generating Economic Recovery (TIGER) program and the Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) program—either require or request (depending on the size and other characteristics of the project) a BCA as part of the grant application process.

FRA drafted the BCA Guidance to be consistent with the DOT BCA guidance, which covers a wide range of surface transportation projects (e.g., highways, transit, rail, and ports) under the TIGER and FASTLANE grant programs. The FRA BCA Guidance is intended to provide greater granularity and specificity to benefit and cost issues associated with intercity passenger rail and freight rail projects.

The BCA Guidance is effective upon the publication of this notice. However, project sponsors and potential applicants for FRA financial assistance programs should refer to the Notice of Funding Opportunity (NOFO) announcement for further instruction regarding the applicability of the BCA Guidance to a particular application or funding program. Due to the timing of the publication of this notice, the BCA Guidance does not apply to applications to the Railroad Safety Infrastructure Improvement Grant program, for which a NOFO was published in the **Federal Register** on April 29, 2016, with applications due to FRA by June 14, 2016.

As noted, written comments on the BCA Guidance must be received by August 1, 2016. FRA will consider such comments when making potential future revisions to the BCA Guidance. However, FRA will not publically respond to comments received nor will FRA address every comment in potential future revisions to the BCA Guidance.

Issued in Washington, DC, on May 26, 2016.

**Sarah E. Feinberg,**  
*Administrator.*

[FR Doc. 2016-12883 Filed 6-1-16; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2016-0053]

#### Categorical Exclusion Survey Review

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** In this notice, FRA is providing the public a review of FRA's survey of categorical exclusions (CEs) used in railroad transportation projects since 2005. FRA is soliciting public comment on the review of the CE survey, two new categories of activities that may be appropriate for categorical exclusion, and any other new categories of activities for FRA consideration as CEs.

**DATES:** FRA must receive written comments on or before July 5, 2016. FRA will consider comments it receives after this date to the extent practicable.

**ADDRESSES:** *Comments:* Persons may submit comments related to Docket FRA-2016-0053 by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* 202-493-2251.

*Instructions:* All submissions must include the agency name, docket name, and docket number for this notice. Note that FRA will post all comments received without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* To access the docket or read background documents or comments received, go to <http://www.regulations.gov> at any time, or 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Johnsen, Environmental and

Corridor Planning Division, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001 or by telephone at (202) 493-1310, or Mr. Chris Van Nostrand, Attorney-Advisor, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001 or by telephone at (202) 493-6058.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 4, 2015, the President signed the Fixing America's Surface Transportation (FAST) Act into law (Pub. L. 114-94). Section 11503 of the FAST Act requires the Secretary, among other things, to: (1) Survey FRA CE use in transportation projects since 2005; and (2) publish in the **Federal Register** for notice and public comment a review of the survey that includes a description of the types of actions categorically excluded and any actions the Secretary is considering for new CEs, including those that would conform to CEs other

DOT modal administrations use. CEs are actions FRA has determined do not individually or cumulatively have significant effects on the human environment and, thus, do not require it to prepare an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). See 40 CFR 1508.4.

FRA's Procedures for Considering Environmental Impacts (FRA Environmental Procedures), 64 FR 28545, May 26, 1999, include a list of 20 CEs. In 2013, FRA updated the FRA Environmental Procedures by adding seven new CEs. 78 FR 2713, Jan. 14, 2013.

##### II. Review of Survey of Categorical Exclusions Used by FRA Since 2005

To comply with the FAST Act section 11503 requirement to survey FRA's use of CEs for transportation projects since 2005, FRA focused its survey on projects funded by FRA-administered financial assistance programs, such as the High-Speed Intercity Passenger Rail and Transportation Investment

Generating Economic Recovery grant programs, the Rail Line Relocation and Improvement program, and the Railroad Rehabilitation and Improvement Financing loan/loan guarantee program. As a result, not all FRA CEs used since 2005 are included in the survey. For example, FRA did not survey FRA's use of CEs for rulemakings.

Table 1 is a review of FRA's survey organized by the frequency of FRA's use of each CE.<sup>1</sup> In general, the survey shows the most frequently applied CEs are for the maintenance or construction of railroad infrastructure, such as maintenance activities for existing railroad infrastructure and equipment; minor rail line additions; and bridge rehabilitation, reconstruction, and replacement. Some CEs shown in Table 1 as Category 2 or 3 also cover maintenance or construction activities, but were recently added in 2013 and thus, have a smaller overall sample size. FRA will use the survey and public comments on this notice to develop proposals for new CEs or modify existing CEs.

TABLE 1—RESULTS OF FRA CE SURVEY: JANUARY, 2005–MARCH, 2016

#### Category 1: Most Frequently Used

- (11) Maintenance of: Existing railroad equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; maintenance-of-way and maintenance-of-equipment bases; and other existing railroad-related facilities. For purposes of this exemption "maintenance" means work, normally provided on a periodic basis, which does not change the existing character of the facility, and may include work characterized by other terms under specific FRA programs.
- (16) Minor rail line additions including construction of side tracks, passing tracks, crossovers, short connections between existing rail lines, and new tracks within existing rail yards provided that such additions are not inconsistent with existing zoning, do not involve acquisition of a significant amount of right of way, and do not significantly alter the traffic density characteristics of the existing rail lines or rail facilities.
- (26) Assembly or construction of facilities or stations that are consistent with existing land use and zoning requirements, do not result in a major change in traffic density on existing rail or highway facilities and result in approximately less than ten acres of surface disturbance, such as storage and maintenance facilities, freight or passenger loading and unloading facilities or stations, parking facilities, passenger platforms, canopies, shelters, pedestrian overpasses or underpasses, paving, or landscaping.
- (22) Bridge rehabilitation, reconstruction or replacement, the rehabilitation or maintenance of the rail elements of docks or piers for the purposes of intermodal transfers, and the construction of bridges, culverts, or grade separation projects, predominantly within existing right-of-way, that do not involve extensive in-water construction activities, such as projects replacing bridge components including stringers, caps, piles, or decks, the construction of roadway overpasses to replace at-grade crossings, construction or reconstruction of approaches and/or embankments to bridges, or construction or replacement of short span bridges.
- (27) Track and track structure maintenance and improvements when carried out predominantly within the existing right-of-way that do not cause a substantial increase in rail traffic beyond existing or historic levels, such as stabilizing embankments, installing or reinstalling track, re-grading, replacing rail, ties, slabs and ballast, installing, maintaining, or restoring drainage ditches, cleaning ballast, constructing minor curve realignments, improving or replacing interlockings, and the installation or maintenance of ancillary equipment.

#### Category 2: Less Frequently Used

- (19) Improvements to existing facilities to service, inspect, or maintain rail passenger equipment, including expansion of existing buildings, the construction of new buildings and outdoor facilities, and the reconfiguration of yard tracks.
- (23) Acquisition (including purchase or lease), rehabilitation, or maintenance of vehicles or equipment that does not cause a substantial increase in the use of infrastructure within the existing right-of-way or other previously disturbed locations, including locomotives, passenger coaches, freight cars, trainsets, and construction, maintenance or inspection equipment.

<sup>1</sup> The number preceding the text of the CE corresponds to the number of the CE in the FRA Environmental Procedures.

TABLE 1—RESULTS OF FRA CE SURVEY: JANUARY, 2005–MARCH, 2016—Continued

## Category 3: Infrequently Used

- (17) Acquisition of existing railroad equipment, track and bridge structures, electrification, communication, signaling or security facilities, stations, maintenance of way and maintenance of equipment bases, and other existing railroad facilities or the right to use such facilities, for the purpose of conducting operations of a nature and at a level of use similar to those presently or previously existing on the subject properties.
- (18) Research, development and/or demonstration of advances in signal, communication and/or train control systems on existing rail lines provided that such as research, development and/or demonstrations do not require the acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail line.
- (19) Improvements to existing facilities to service, inspect, or maintain rail passenger equipment, including expansion of existing buildings, the construction of new buildings and outdoor facilities, and the reconfiguration of yard tracks.
- (24) Installation, repair and replacement of equipment and small structures designed to promote transportation safety, security, accessibility, communication or operational efficiency that take place predominantly within the existing right-of-way and do not result in a major change in traffic density on the existing rail line or facility, such as the installation, repair or replacement of surface treatments or pavement markings, small passenger shelters, passenger amenities, benches, signage, sidewalks or trails, equipment enclosures, and fencing, railroad warning devices, train control systems, signalization, electric traction equipment and structures, electronics, photonics, and communications systems and equipment, equipment mounts, towers and structures, information processing equipment, and security equipment, including surveillance and detection cameras.
- (12) Temporary replacement of an essential rail facility if repairs are commenced immediately after the occurrence of a natural disaster or catastrophic failure.
- (25) Environmental restoration, remediation and pollution prevention activities in or proximate to existing and former railroad track, infrastructure, stations and facilities conducted in conformance with applicable laws, regulations and permit requirements, including activities such as noise mitigation, landscaping, natural resource management activities, replacement or improvement to storm water oil/water separators, installation of pollution containment systems, slope stabilization, and contaminated soil removal or remediation activities.
- (21) Alterations to existing facilities, locomotives, stations and rail cars in order to make them accessible for the elderly and persons with disabilities, such as modifying doorways, adding or modifying lifts, constructing access ramps and railings, modifying restrooms, and constructing accessible platforms.
- (15) Financial assistance for the construction of minor loading and unloading facilities, provided that projects included in this category are consistent with local zoning, do not involve the acquisition of a significant amount of land, and do not significantly alter the traffic density characteristics of existing rail or highway facilities.

### III. New Categorical Exclusions FRA Is Considering

Since updating its CE list in 2013, FRA has identified the following two classes of actions that may be appropriate for categorical exclusion:

- Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes; and
- Refinancing assistance where the project sponsor has already completed project-related construction activities.

FRA seeks input from interested parties, stakeholders, and the public on additional categories of activities appropriate for a CE that FRA should consider. FRA also seeks comment on the two CEs listed above.

Issued in Washington, DC, on May 26, 2016.

**Sarah E. Feinberg,**  
Administrator.

[FR Doc. 2016-12884 Filed 6-1-16; 8:45 am]

**BILLING CODE 4910-06-P**

### DEPARTMENT OF TRANSPORTATION

#### Maritime Administration

[Docket No. DOT-MARAD-2016-0057]

#### Agency Requests for Renewal of a Previously Approved Information Collection(s): Voluntary Tanker Agreement

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Maritime Administration (MARAD) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection of information is used to gather information on tanker operators who agree to contribute, either by direct charter to the Department of Defense or to other participants tanker capacity as requested by the Maritime Administrator at such times and such amounts as determined to be necessary to meet the essential needs of DOD for the transportation of petroleum and petroleum products in bulk by sea. The Voluntary Tanker Agreement is a voluntary emergency preparedness agreement in accordance with Section 708, Defense Production Act, 195, as amended (50 U.S.C. App. 2158). We are required to publish this notice in the **Federal Register** by the Paperwork

Reduction Act of 1995, Public Law 104-13.

**DATES:** Written comments should be submitted by August 1, 2016.

**ADDRESSES:** You may submit comments identified by Docket No. DOT-MARAD-2016-0057 through one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 1-202-493-2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** William G. McDonald, 202-366-0688, Director, Office of Sealift Support, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**  
*OMB Control Number:* 2133-0505.  
*Title:* Voluntary Tanker Agreement.  
*Form Numbers:* MA-1060.  
*Type of Review:* Renewal of an information collection.

*Background:* The collection consists of a request from the Maritime Administration (MARAD) that each participant in the Voluntary Tanker Agreement submit a list of the names of ships owned, chartered or contracted for

by the participant, their size and flags of registry and other pertinent information. There is a recommended format for this information included as part of the application. The collection of information is necessary to evaluate tanker capability and make plans for use of this capability to meet national emergency requirements. This information will be used by both MARAD and Department of Defense to establish overall contingency plans.

*Respondents:* Tanker companies that operate in international trade and who have agreed to participate in this agreement.

*Number of Respondents:* 15.

*Frequency:* Annually.

*Number of Responses:* 15 (1 per respondent).

*Total Annual Burden:* 15.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

Dated: May 25, 2016.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2016-12974 Filed 6-1-16; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

[Docket No. DOT-MARAD-2016-0055]

### Agency Requests for Renewal of a Previously Approved Information Collection(s): Generic Clearance of Customer Satisfaction Surveys

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, the Maritime Administration (MARAD) seeks to obtain OMB approval of

previously approved generic clearance to collect feedback on our service delivery. By feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

**DATES:** Written comments should be submitted by August 1, 2016.

**ADDRESSES:** You may submit comments [identified by Docket No. DOT-MARAD-2016-0055] through one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1-202-493-2251.

- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Barbara Jackson, 202-366-0615, Office of Management and Administrative Services, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

*OMB Control Number:* 2133-0546.

*Title:* Generic Clearance of Customer Satisfaction Surveys.

*Type of Review:* Renewal of an information collection.

*Background:* Executive Order 12862 "Setting Customer Service Standards," direct Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector (58 FR 48257, Sept. 11, 1993). In order to work continuously to ensure that our programs are effective and meet our customers' needs, MARAD seeks to obtain OMB approval of a previously approved generic clearance to collect qualitative feedback from our customers on our service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or 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 the Agency and its customers and

stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;

- The collections are noncontroversial and do not raise issues of concern to other Federal agencies;

- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;

- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency (if released, the agency must indicate the qualitative nature of the information);

- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does 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 nonresponse 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. As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

*Respondents:* Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

*Estimated Expected Annual Number of Activities:* 15.

*Estimated Annual Responses:* 5,900.

*Frequency of Response:* Once per Request.

*Estimated Annual Burden:* 1,758.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

Dated: May 24, 2016.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2016-12973 Filed 6-1-16; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### Finding That the Democratic People's Republic of Korea Is a Jurisdiction of Primary Money Laundering Concern

**AGENCY:** The Financial Crimes Enforcement Network ("FinCEN"), Treasury.

**ACTION:** Notice of finding.

**SUMMARY:** This document provides notice that, pursuant to the authority contained in the USA PATRIOT Act, the Director of FinCEN found on May 27, 2016 that reasonable grounds exist for concluding that the Democratic People's Republic of Korea ("DPRK" or "North Korea") is a jurisdiction of primary money laundering concern.

**FOR FURTHER INFORMATION CONTACT:** FinCEN, (800) 949-2732.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), Public Law 107-56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act ("BSA"), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314 and 5316-5332, to promote prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X.

Section 311 of the USA PATRIOT Act ("Section 311") added 31 U.S.C. 5318A to the BSA, granting the Secretary of the Treasury (the "Secretary") the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transactions, or type of account is of "primary money laundering concern," to require domestic financial institutions and financial agencies to take certain "special measures" against the primary money laundering concern. Section 311 identifies factors for the Secretary to consider and requires Federal agencies to consult before the Secretary may conclude that a jurisdiction, institution, class of transaction, or type of account is of primary money laundering concern. The statute also provides similar procedures, *i.e.*, factors and consultation requirements, for selecting the specific special measures to be imposed against

the primary money laundering concern. For purposes of the finding contained in this notice, the Secretary has delegated his authority under Section 311 to the Director of FinCEN.<sup>1</sup>

Taken as a whole, Section 311 provides the Secretary with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. Through the imposition of various special measures, the Secretary can gain more information about the jurisdictions, institutions, transactions, or accounts of concern; can more effectively monitor the respective jurisdictions, institutions, transactions, or accounts; or can prohibit U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

Before making a finding that reasonable grounds exist for concluding that a jurisdiction is of primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General. The Secretary is also required by Section 311, as amended,<sup>2</sup> to consider "such information as the Secretary determines to be relevant, including the following potentially relevant factors," which extend the Secretary's consideration beyond traditional money laundering concerns to issues involving, *inter alia*, terrorist financing and the proliferation of weapons of mass destruction ("WMD") or missiles:

- Evidence that organized criminal groups, international terrorists, or entities involved in the proliferation of WMD or missiles, have transacted business in that jurisdiction;
- The extent to which that jurisdiction or financial institutions operating in that jurisdiction offer bank secrecy or special regulatory advantages to nonresidents or nondomiciliaries of that jurisdiction;
- The substance and quality of administration of the bank supervisory and counter-money laundering laws of that jurisdiction;
- The relationship between the volume of financial transactions occurring in that jurisdiction and the size of the economy of the jurisdiction;
- The extent to which that jurisdiction is characterized as an offshore banking or secrecy haven by

<sup>1</sup> Therefore, references to the authority and findings of the Secretary in this document apply equally to the Director of FinCEN.

<sup>2</sup> 31 U.S.C. 5318A was amended by section 501 of the Iran Freedom Support Act of 2006, Public Law 109-293.

credible international organizations or multilateral expert groups;

- Whether the United States has a mutual legal assistance treaty with that jurisdiction, and the experience of U.S. law enforcement officials and regulatory officials in obtaining information about transactions originating in or routed through or to such jurisdiction; and

- The extent to which that jurisdiction is characterized by high levels of official or institutional corruption.

If the Secretary determines that reasonable grounds exist for concluding that a jurisdiction is of primary money laundering concern, the Secretary is authorized to impose one or more of the special measures in Section 311 to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed individually, jointly, and in any sequence.<sup>3</sup> Before imposing special measures, the statute requires the Secretary to consult with appropriate federal agencies and other interested parties<sup>4</sup> and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measures would create significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;
- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction; and

<sup>3</sup> Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)–(5).

<sup>4</sup> Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (“SEC”), the Commodity Futures Trading Commission (“CFTC”), the National Credit Union Administration (“NCUA”), and, in the sole discretion of the Secretary, “such other agencies and interested parties as the Secretary may find to be appropriate.” The consultation process must also include the Attorney General if the Secretary is considering prohibiting or imposing conditions on domestic financial institutions opening or maintaining correspondent account relationships with the targeted entity.

- The effect of the action on U.S. national security and foreign policy.

#### *B. Democratic People’s Republic of Korea*

As set out in detail below, North Korea continues to advance its nuclear and ballistic missile programs in violation of international treaties, international censure and sanctions measures, and U.S. law. North Korea does this using an extensive overseas network of front companies, shell companies, joint ventures, and opaque business relationships. North Korea conducts almost no banking in true name in the formal financial system given that many of its outward facing agencies and financial institutions have been sanctioned by the United States, the United Nations, or both.

While none of North Korea’s financial institutions maintain correspondent accounts with U.S. financial institutions,<sup>5</sup> North Korea does have access to the U.S. financial system through a system of front companies, business arrangements, and representatives that obfuscate the true originator, beneficiary, and purpose of transactions. We assess that these deceptive practices have allowed millions of U.S. dollars of DPRK illicit activity to flow through U.S. correspondent accounts.

Moreover, although U.S. and international sanctions have served to significantly isolate North Korean banks from the international financial system, the North Korean government continues to access the international financial system to support its WMD and conventional weapons programs. This is made possible through its use of aliases, agents, foreign individuals in multiple jurisdictions, and a long-standing network of front companies and North Korean embassy personnel which support illicit activities through banking, bulk cash, and trade. Front company transactions originating in foreign-based banks have been processed through correspondent bank accounts in the United States and Europe. Further, the enhanced due diligence required by United Nations Security Council Resolutions (UNSCRs) related to North Korea is undermined by North Korean-linked front companies, which are often registered by non-North Korean citizens, and which conceal their activity through the use of indirect payment methods and circuitous

<sup>5</sup> Bankers Almanac, accessed February 12, 2016.

transactions disassociated from the movement of goods or services.<sup>6</sup>

The Treaty on the Non-Proliferation of Nuclear Weapons and the International Atomic Energy Agency Safeguards Agreement work together to prevent the development of nuclear weapons and promote the peaceful use of nuclear energy. Although North Korea acceded to the Treaty on the Non-Proliferation of Nuclear Weapons (“NPT”) in 1985, it withdrew from the Treaty in 2003. Subsequently, North Korea demonstrated its nuclear weapons capacity with nuclear tests in 2006, 2009, 2013, and 2016.<sup>7</sup>

Since 2005, North Korea has been sanctioned repeatedly for its proliferation of WMD and the development of nuclear and ballistic missile programs. Between June 2006 and 2016, the United Nations (UN) Security Council issued five UNSCRs—1718, 1874, 2087, 2094, and 2270—restricting North Korea’s financial and operational activities related to its nuclear and missile programs and conventional arms sales.<sup>8</sup> In addition, the President of the United States has issued Executive Orders (“E.O.s”) 13466, 13551, 13570, 13687, and 13722 to impose sanctions on North Korea pursuant to the International Emergency Economic Powers Act, and the Department of the Treasury has designated North Korea targets for asset freezes pursuant to other E.O.s, such as E.O. 13382, which targets WMD proliferators worldwide. A designation under any one of the targeting E.O.s generally blocks the property and interests in property in the United States or in the possession or control of a U.S. person of a designated person, and prohibits U.S. persons from engaging in transactions with, or dealing in property interests of, a designated person.

On June 28, 2005, the President issued E.O. 13382, “Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters,” which orders certain measures to be taken to address the threat posed to the United States by the proliferation of

<sup>6</sup> See “Report of the Panel of Experts established pursuant to resolution 1874 (2009),” February, 2016.

<sup>7</sup> See “IAEA and DPRK: Chronology of Key Events,” (<https://www.iaea.org/newscenter/focus/dprk/chronology-of-key-events>).

<sup>8</sup> See UNSCR 1718 ([http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/1718\(2006\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1718(2006))); UNSCR 1874 ([http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/1874\(2009\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1874(2009))); UNSCR 2087 ([http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2087\(2013\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2087(2013))); UNSCR 2094 ([http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2094\(2013\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2094(2013))); UNSCR 2270 ([http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2270\(2016\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2270(2016))).



WMD and their means of delivery.<sup>9</sup> The following two North Korean entities were sanctioned in the Annex to E.O. 13382: Korea Mining Development Trading Corporation (KOMID), North Korea's primary arms exporter; and Tanchon Commercial Bank (TCB), the financial arm of KOMID. As noted further below, additional North Korean financial institutions, including Korea Kwangson Banking Corporation (KKBC), Foreign Trade Bank (FTB), and Daedong Credit Bank (DCB), were subsequently designated pursuant to E.O. 13382.

On June 26, 2008, the President issued E.O. 13466, "Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals," declaring a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the existence and risk of the proliferation of weapons-usable fissile material on the Korean peninsula.<sup>10</sup>

On August 30, 2010, the President issued E.O. 13551, "Blocking Property of Certain Persons with Respect to North Korea," which authorized asset blockings against those determined, among other things, to have engaged in the importation or exportation of North Korean arms or the exportation to North Korea of luxury goods.<sup>11</sup>

On April 18, 2011, the President issued E.O. 13570, "Prohibiting Certain Transactions with Respect to North Korea," which takes additional steps to address the national emergency declared in E.O. 13466 and expanded in E.O. 13551.<sup>12</sup> This E.O. was designed in part to ensure implementation of the import restrictions contained in UNSCRs 1718 and 1874.

On January 2, 2015, the President issued E.O. 13687, "Imposing Additional Sanctions with Respect to North Korea," which blocks the property of persons who are determined

<sup>9</sup> See E.O. 13382 "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters," (2005) (<https://www.federalregister.gov/articles/2005/07/01/05-13214/blocking-property-of-weapons-of-mass-destruction-proliferators-and-their-supporters>).

<sup>10</sup> See E.O. 13466 "Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals," (2008) (<https://www.federalregister.gov/articles/2008/06/27/08-1399/continuing-certain-restrictions-with-respect-to-north-korea-and-north-korean-nationals>).

<sup>11</sup> See E.O. 13551 "Blocking Property of Certain Persons with Respect to North Korea," (2010) (<https://www.gpo.gov/fdsys/pkg/FR-2010-09-01/pdf/X10-10901.pdf>).

<sup>12</sup> See E.O. 13570 "Prohibiting Certain Transactions with Respect to North Korea," (2011) (<https://www.federalregister.gov/articles/2011/04/20/2011-9739/prohibiting-certain-transactions-with-respect-to-north-korea>).

to be officials, agencies, instrumentalities, or controlled entities of the Government of North Korea or the Workers' Party of Korea.<sup>13</sup>

On March 15, 2016, the President issued E.O. 13722, "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions with Respect to North Korea," which, among other things, blocks the property and interests in property of the Government of North Korea and the Workers' Party of Korea and authorizes further asset blockings on persons determined to be operating in industries of the North Korean economy determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be subject to the measure. To date those industries include the transportation, mining, energy and financial services industries.<sup>14</sup> Additionally, FinCEN issued advisories in 2005, 2009, and 2013 regarding the threat posed by the North Korean government to U.S. and international financial institutions. Specifically, these advisories have urged caution when dealing with North Korean financial institutions due to their use of front companies and other deceptive financial practices.<sup>15</sup>

Numerous North Korean individuals, financial institutions, and other entities facilitating financial transactions in support of North Korea's proliferation of WMD or ballistic missiles have been listed in or designated pursuant to these UNSCRs or E.O.s. In many cases, these sanctions have targeted front companies or the individual representatives of sanctioned entities who operate outside of North Korea.

## II. Analysis of Factors

Based upon a review of information available to FinCEN, consultations with

<sup>13</sup> See E.O. 13687 "Imposing Additional Sanctions with Respect to North Korea," (2015) (<https://www.federalregister.gov/articles/2015/01/06/2015-00058/imposing-additional-sanctions-with-respect-to-north-korea>).

<sup>14</sup> See E.O. 13722 "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions with Respect to North Korea," (2016) (<https://www.gpo.gov/fdsys/pkg/FR-2016-03-18/pdf/FR-2016-03-18.pdf>).

<sup>15</sup> See "Guidance to Financial Institutions on the Provision of Banking Services to North Korean Government Agencies and Associated Front Companies Engaged in Illicit Activities," FinCEN (2005) ([https://www.fincen.gov/statutes\\_regs/guidance/pdf/advisory.pdf](https://www.fincen.gov/statutes_regs/guidance/pdf/advisory.pdf)); "North Korea Government Agencies' and Front Companies' Involvement in Illicit Financial Activities," FinCEN (2009) ([https://www.fincen.gov/statutes\\_regs/guidance/pdf/fin-2009-a002.pdf](https://www.fincen.gov/statutes_regs/guidance/pdf/fin-2009-a002.pdf)); "Update on the Continuing Illicit Finance Threat Emanating from North Korea," FinCEN (2013) ([https://www.fincen.gov/statutes\\_regs/guidance/pdf/FIN-2013-A005.pdf](https://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2013-A005.pdf)).

relevant federal agencies and departments, and in consideration of the factors enumerated in Section 311 of the USA PATRIOT Act, the Director of FinCEN has determined that reasonable grounds exist for concluding that North Korea is a jurisdiction of primary money laundering concern. While FinCEN has considered all potentially relevant factors set forth in Section 5318A, a discussion of those most pertinent to this finding follows. FinCEN has determined that North Korea (A) uses state-controlled financial institutions and front companies to conduct international financial transactions that support the proliferation of WMD and the development of ballistic missiles in violation of international and U.S. sanctions; (B) is subject to little or no bank supervision or anti-money laundering or combating the financing of terrorism ("AML/CFT") controls; (C) has no mutual legal assistance treaty with the United States; and (D) relies on the illicit and corrupt activity of high-level officials to support its government.

### A. Evidence That Organized Criminal Groups, International Terrorists, or Entities Involved in the Proliferation of Weapons of Mass Destruction or Missiles, Have Transacted Business in That Jurisdiction

North Korea uses state-owned entities and banks to conduct transactions in support of North Korea's proliferation of WMD or ballistic missiles. The United States and United Nations have identified Korea Mining Development Trading Corporation (KOMID), Tanchon Commercial Bank (TCB), Korea Kwangson Banking Corporation (KKBC), and Daedong Credit Bank (DCB) as entities that conduct financial transactions in support of North Korea's proliferation of WMD or ballistic missiles; the United States has also sanctioned Foreign Trade Bank (FTB) for this activity. Directing business from North Korea, these state-owned entities and banks use front companies or covert representatives to obfuscate the true originator, beneficiary, and purpose of transactions. Doing so has allowed millions of U.S. dollars of DPRK illicit activity to flow through U.S. correspondent accounts. Entities in North Korea involved in the proliferation of WMD or ballistic missiles conduct business in, from, or through North Korea, or at the direction of the North Korean government, have evaded the prohibitions set forth in relevant UNSCRs and E.O.s.

The Korea Mining Development Trading Corporation

The President subjected the Korea Mining Development Trading Corporation (KOMID) to an asset blocking by listing it in the Annex of E.O. 13382 in June 2005,<sup>16</sup> and the Department of the Treasury designated KOMID pursuant to E.O. 13687 in January 2015<sup>17</sup> for being North Korea's primary arms dealer and its main exporter of goods and equipment related to ballistic missiles and conventional weapons.<sup>18</sup> The UN Security Council also listed KOMID under UNSCR 1718 in April 2009, subjecting it to a worldwide asset blocking.<sup>19</sup> Further, between 2013 and 2016, the Department of the Treasury designated a number of individuals under E.O. 13382 or E.O. 13687 for their roles acting on behalf of KOMID in, or as KOMID representatives to, Burma, China, Egypt, Iran, Namibia, Russia, Sudan, and Syria.<sup>20</sup>

Despite the sanctions placed on KOMID and its network, North Korea continues to sell weapons abroad. Between 2001 and 2007, North Korean weapons manufacturers marketed or exported North Korean weapons to Angola, Cuba, Iran, Iraq, Pakistan, Uganda, United Arab Emirates, and Yemen. As recently as 2015, KOMID marketed or exported North Korean ballistic missiles or conventional

weapons through its representatives in Burma and its office in Indonesia. In 2015, KOMID also sold dual-use WMD-related equipment to Egypt, and engaged with Egypt on missile cooperation and development. Additionally, KOMID occasionally procures equipment and materials for Second Academy of Natural Sciences (SANS) research—an entity subject to an asset blocking by the U.S. under E.O. 13382 in August 2010 for using subordinate organizations to obtain technology, equipment, and information for use in North Korea's weapons and nuclear programs.<sup>21</sup>

Payments for weapons were often funneled through front companies operating at the direction of North Korean banks. The Department of the Treasury designated one of these front companies, Leader (Hong Kong) International Trading Limited, under E.O. 13382 in January 2013 for facilitating the shipment of machinery and equipment to customers on behalf of KOMID and directly to KOMID representatives located outside of North Korea.<sup>22</sup> Between January 2009 and November 2012, Leader (Hong Kong) International cleared at least \$13.5 million through correspondent accounts at U.S. banks.

#### The Tanchon Commercial Bank

As noted above, Tanchon Commercial Bank (TCB) was listed by the President in the Annex of E.O. 13382 in June 2005, subjecting it to an asset blocking, and the UN Security Council listed TCB under UNSCR 1718 in April 2009.<sup>23</sup> TCB is the financial arm of KOMID and the main North Korean financial institution for the sale of conventional arms, ballistic missiles, and goods related to the assembly and manufacture of such weapons.<sup>24</sup> Between 2009 and 2015 the Department of the Treasury designated nine individuals under E.O. 13382 for working on behalf of TCB, including as representatives to China, Syria, and Vietnam.<sup>25</sup> Each of these

individuals is also listed under UNSCR 1718.<sup>26</sup>

North Korea has a long history of using TCB and front companies to facilitate proliferation and missile-related transactions. Dating as far back as 2005, TCB, Korea Namchongang Trading Corporation (“Namchongang”), and front companies have facilitated deals that could be associated with proliferation. The U.S. Department of State designated Namchongang in June 2009 under E.O. 13382 for WMD proliferation activities;<sup>27</sup> the UN listed Namchongang under UNSCR 1718 in July 2009,<sup>28</sup> and also listed its successor organization—Nahung Trading Corporation—under UNSCR 2270 in March 2016.<sup>29</sup> TCB also received millions of U.S. dollars in 2009 from a China-based representative as partial payment for weapons exported to Burma, Iran, and other countries. Additionally, in 2015 TCB accounts were used to purchase technology and equipment in support of U.S.-designated SANS research and development activities.

#### The Korea Kwangson Banking Corporation

As noted, the Department of the Treasury sanctioned Korea Kwangson Banking Corporation (KKBC) under E.O. 13382 in August 2009 for facilitating financial transactions for E.O. 13382-sanctioned TCB and the Korea Hyoksin Trading Corporation (“Hyoksin”);<sup>30</sup> the UN listed KKBC under UNSCR 2270 in March 2016.<sup>31</sup> As noted above, TCB was sanctioned by the United States in June 2005 and listed by the UN under UNSCR 1718 in April 2009; further, in July 2009 the Department of the Treasury designated Hyoksin under E.O.

Of Mass Destruction Program,” January 24, 2013 (<https://www.treasury.gov/press-center/press-releases/Pages/tg1828.aspx>); “Treasury Targets North Korea's Global Weapons Proliferation Network,” December 8, 2015 (<https://www.treasury.gov/press-center/press-releases/Pages/jl0295.aspx>); “Non-proliferation Designations,” March 7, 2013 (<https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130307.aspx>).

<sup>26</sup> See “The List Established and Maintained by the 1718 (2006) Committee,” (<https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/1718.pdf>).

<sup>27</sup> See “State Designation of North Korean Nuclear Entity,” June 30, 2009 ([www.state.gov/r/pa/prs/ps/2009/06a/125505.htm](http://www.state.gov/r/pa/prs/ps/2009/06a/125505.htm)).

<sup>28</sup> See “Security Council Committee Determines Entities, Goods, Individuals, Subject to Measures Imposed on Democratic People's Republic of Korea by Resolution 1718 (2006),” July 16, 2009 ([www.un.org/press/en/2009/sc9708.doc.htm](http://www.un.org/press/en/2009/sc9708.doc.htm)).

<sup>29</sup> See UNSCR 2270.

<sup>30</sup> See “Treasury Designates Financial Institution Tied to North Korea's WMD Proliferation,” August 11, 2009 (<https://www.treasury.gov/press-center/press-releases/Pages/tg260.aspx>).

<sup>31</sup> See UNSCR 2270.

<sup>16</sup> See E.O. 13382.

<sup>17</sup> See “Issuance of new North Korea-related Executive Order; North Korea Designations,” January 2, 2015 (<https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20150102.aspx>).

<sup>18</sup> See “Treasury Imposes Sanctions Against the Government of the Democratic People's Republic of Korea,” January 2, 2015 (<https://www.treasury.gov/press-center/press-releases/Pages/jl9733.aspx>).

<sup>19</sup> See “Letter dated 24 April 2009 from the Chairman of the Security Council Committee established pursuant to resolution 1718 (2006) addressed to the President of the Security Council,” April 24, 2009 (<http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/NKorea%20S2009%20222.pdf>).

<sup>20</sup> See “United States Sanctions Individuals Linked to North Korea Weapons of Mass Destruction Programs,” March 7, 2013 (<https://www.treasury.gov/press-center/press-releases/Pages/jl1872.aspx>); “Treasury Imposes Sanctions Against the Government of the Democratic People's Republic of Korea,” January 2, 2015 (<https://www.treasury.gov/press-center/press-releases/Pages/jl9733.aspx>); “Treasury Sanctions Supporters of North Korea's Weapons of Mass Destruction and Illicit Finance Networks,” November 13, 2015 (<https://www.treasury.gov/press-center/press-releases/Pages/jl0269.aspx>); “Treasury Sanctions Those Involved in Ballistic Missile Procurement for Iran,” January 17, 2016 (<https://www.treasury.gov/press-center/press-releases/Pages/jl0322.aspx>); “The United States Sanctions North Korean Government Officials and Organizations Tied to its Missile and Nuclear Programs,” March 2, 2016 (<https://www.treasury.gov/press-center/press-releases/Pages/jl0372.aspx>).

<sup>21</sup> See “United States Designates North Korean Entities and Individuals for Activities Related to North Korea's Weapons of Mass Destruction Program,” August 30, 2010 (<https://www.treasury.gov/press-center/press-releases/Pages/tg840.aspx>).

<sup>22</sup> See “Treasury Sanctions Company And Individuals Linked To North Korean Weapons Of Mass Destruction Program,” January 24, 2013 (<https://www.treasury.gov/press-center/press-releases/Pages/tg1828.aspx>).

<sup>23</sup> See UNSCR 1718.

<sup>24</sup> See E.O. 13382; see also Footnote 28.

<sup>25</sup> See “Treasury Designates North Korean Bank and Banking Official as Proliferators of Weapons of Mass Destruction,” October 23, 2009 (<https://www.treasury.gov/press-center/press-releases/Pages/tg330.aspx>); “Treasury Sanctions Company And Individuals Linked To North Korean Weapons

13382, and the UN listed Hyoksin under UNSCR 1718 for WMD proliferation activity.<sup>32</sup> In spite of its designation, KKBC has continued to evade sanctions and process financial transactions that support the proliferation of WMD and ballistic missiles by using front companies to clear U.S. dollar transactions through U.S. correspondent accounts. In 2013, senior North Korean leadership utilized a KKBC front company to open accounts at a major Chinese bank under the names of Chinese citizens, and deposited millions of U.S. dollars into the accounts. The same KKBC front company processed transactions through U.S. correspondent accounts as recently as 2013.

#### The Foreign Trade Bank

The Department of the Treasury designated Foreign Trade Bank (FTB) under E.O. 13382 in March 2013 for facilitating transactions on behalf of actors linked to North Korea's nuclear proliferation networks.<sup>33</sup> Headquartered in Pyongyang, FTB acts as North Korea's primary foreign exchange bank and has provided financial support to KOMID and KKBC. As noted above, KOMID was sanctioned by the United States in July 2005 under E.O. 13382, and listed by the UN in April 2009 under UNSCR 1718; the Department of the Treasury designated KKBC under E.O. 13382 in August 2009, and the UN listed KKBC under UNSCR 2270 in March 2016.

The following examples are representative of the activities of FTB and its front companies. Between 2008 and 2012, FTB used front companies in multiple countries to make and receive payments equivalent to tens of millions of U.S. dollars. In 2011, an FTB front company was involved with U.S.-designated KKBC and Korea 5 Trading Corporation, a subordinate of U.S. and UN-designated Korea Ryonbong General Corporation, in financial dealings totaling several millions of U.S. dollars. The same FTB front company processed transactions through U.S. correspondent accounts as recently as April 2014.

#### The Daedong Credit Bank

The Department of the Treasury designated Daedong Credit Bank (DCB)

under E.O. 13382 in June 2013 for managing millions of dollars of transactions in support of the North Korean regime's nuclear proliferation and missile-related activities.<sup>34</sup> The UN listed DCB under UNSCR 2270 in March 2016. DCB has demonstrated through its activity that it is willing to facilitate transactions at the direction of, and in coordination with, the government of North Korea. Since at least 2007, DCB has facilitated hundreds of financial transactions worth millions of dollars on behalf of designated actors, KOMID and TCB. Some of these transactions involved deceptive practices that include the use of front companies located outside of North Korea to process cross-border payments. DCB also directed a front company, DCB Finance Limited, to carry out international financial transactions as a means to avoid scrutiny by financial institutions. DCB Finance Limited has conducted transactions through correspondent accounts at U.S. banks.

Based upon the information above, the North Korean government, through entities and financial institutions based in North Korea, facilitates financial transactions in support of the proliferation of WMD and ballistic missiles in violation of UNSCR 1718. Additionally, by creating and using front companies with the intent to obfuscate the true originator, beneficiary, or purpose of transactions, these state-owned entities and financial institutions have engaged in a pattern of deceptive financial activity to evade international sanctions, circumvent U.S. sanctions and AML controls, and penetrate the U.S. financial system when such activity would otherwise be prohibited. This activity represents a direct threat to the integrity of the U.S. financial system.

#### B. The Substance and Quality of Administration of the Bank Supervisory and Counter-Money Laundering Laws of That Jurisdiction

The Financial Action Task Force (FATF) is an inter-governmental body that sets international standards and promotes the implementation of legal, regulatory, and operational measures for combatting money laundering, terrorist financing, WMD proliferation financing, and other related threats to the integrity of the international financial system.<sup>35</sup> The FATF monitors the progress of its

members in implementing necessary measures, reviews money laundering and terrorist financing techniques and countermeasures, and promotes the adoption and implementation of appropriate measures globally. In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse. Due to North Korea's ongoing failure to address its AML/CFT deficiencies, the FATF has publicly identified substantial money laundering and terrorist financing risks emanating from the jurisdiction and has identified North Korea as one of only two jurisdictions in the world subject to FATF counter-measures since 2011.

In FATF's Public Statement dated February 19, 2016, the FATF reiterated its concern about North Korea's failure to address the significant deficiencies in its AML/CFT regime, and the serious threat such deficiencies pose to the integrity of the international financial system. The FATF called on its members and urged all jurisdictions to advise their financial institutions to give special attention to business relationships and transactions with North Korea, including North Korean companies and financial institutions. The FATF also warned that jurisdictions should protect against correspondent relationships being used to bypass or evade countermeasures and risk mitigation practices, and take into account AML/CFT risks when considering requests by North Korean financial institutions to open branches and subsidiaries in their jurisdiction.<sup>36</sup> While steps may have been taken by North Korea to engage with the FATF, including becoming an observer to the Asia Pacific Group, a FATF-style regional body, North Korea lacks basic AML/CFT controls and has failed to address the deficiencies in its AML/CFT regime identified by FATF.<sup>37</sup>

<sup>32</sup> See "Treasury Designates North Korean Entity Tied to Weapons of Mass Destruction Development," July 30, 2009 (<https://www.treasury.gov/press-center/press-releases/Pages/tg247.aspx>); "Security Council Determines Entities, Goods, Individuals Subject To Measures Imposed on Democratic People's Republic of Korea by Resolution 1718 (2006)," July 16, 2009 (<http://www.un.org/press/en/2009/sc9708.doc.htm>).

<sup>33</sup> See "Treasury Sanctions Bank and Official Linked to North Korean Weapons of Mass Destruction Programs," March 11, 2013 (<https://www.treasury.gov/press-center/press-releases/Pages/jl1876.aspx>).

<sup>34</sup> See "Treasury Sanctions Bank, Front Company, and Official Linked to North Korean Weapons of Mass Destruction Programs," June 27, 2013 (<https://www.treasury.gov/press-center/press-releases/Pages/jl1994.aspx>).

<sup>35</sup> See Financial Action Task Force Web site (<http://www.fatf-gafi.org/>).

<sup>36</sup> See "FATF Public Statement—19 February 2016," (2016) (<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-february-2016.html>).

<sup>37</sup> See "North Korea Adopts Anti-Money Laundering Law," NK News, May 18, 2016 (<https://www.nknews.org/2016/05/north-korea-adopts-anti-money-laundering-law/>).

C. Whether the United States Has a Mutual Legal Assistance Treaty With That Jurisdiction, and the Experience of U.S. Law Enforcement Officials and Regulatory Officials in Obtaining Information About Transactions Originating in or Routed Through or to That Jurisdiction

The United States and North Korea do not have diplomatic relations. North Korea has no mutual legal assistance treaty with the United States and does not cooperate with U.S. law enforcement officials and regulatory officials in obtaining information about transactions originating in, or routed through or to, North Korea.<sup>38</sup>

D. The Extent To Which That Jurisdiction Is Characterized by High Levels of Official or Institutional Corruption

The North Korean government has long demonstrated institutional and official corruption. According to Transparency International's Corruption Perceptions Index, which ranks countries and territories based on how corrupt their public sectors are perceived to be, North Korea ranks 167 out of 168.<sup>39</sup> As noted above, UNSCRs 1718, 2094, and 2270 require UN member states to prohibit the provision to North Korea of luxury goods, which are used by North Korean leaders to consolidate power and appease members of the political elite by increasing their personal wealth. North Korea has also utilized Office 39 of the Korean Workers' Party (KWP) to influence and maintain the support of North Korea's elite citizens.<sup>40</sup>

Office 39 was listed for an asset blocking by the President in the Annex to E.O. 13551 in August 2010,<sup>41</sup> and is the branch of the North Korean Government that provides illicit economic support to North Korean leadership, including managing slush funds for North Korean government officials.<sup>42</sup> The UN listed Office 39

under UNSCRs 1718 and 2270 in March 2016.<sup>43</sup> Examples of Office 39 activity include collecting a significant portion of loyalty funds paid by DPRK officials to the regime annually, and using deceptive financial practices such as smuggling U.S. dollars into North Korea.

To support its efforts, Office 39 controls Korea Daesong Bank (KDB), which is used to facilitate financial transactions supporting the procurement of luxury goods. Treasury designated KDB under E.O. 13551 in November 2010 as an instrumentality of Office 39.<sup>44</sup> In spite of its designation, KDB continues to conduct illicit transactions on behalf of the regime, including by operating front companies on behalf of organizations such as Office 39 abroad; by using an overseas branch office to both pay a number of overseas companies that provide labor and services on behalf of North Korea, and to remit funds to Pyongyang; and by utilizing KDB representatives abroad to make payments for goods imported into North Korea.

**Jamal El-Hindi,**

*Acting Director, Financial Crimes Enforcement Network.*

[FR Doc. 2016-13038 Filed 6-1-16; 8:45 am]

**BILLING CODE 4810-02-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Proposed Collection; Comment Request for Form 3520**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipts of Certain Foreign Gifts.

November 18, 2010 (<https://www.treasury.gov/press-center/press-releases/Pages/tg962.aspx>).

<sup>43</sup> See UNSCR 1718; UNSCR 2270.

<sup>44</sup> See "Treasury Designates Key Nodes of the Illicit Financing Network of North Korea's Office 39," November 18, 2010 (<https://www.treasury.gov/press-center/press-releases/Pages/tg962.aspx>).

**DATES:** Written comments should be received on or before August 1, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at [Sara.L.Covington@irs.gov](mailto:Sara.L.Covington@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Annual Return To Report Transactions With Foreign Trusts and Receipts of Certain Foreign Gifts.

*OMB Number:* 1545-0159.

*Form Number:* Form 3520.

*Abstract:* U.S. persons who create a foreign trust or transfer property to a foreign trust must file Form 3520 to report the establishment of the trust or the transfer of property to the trust. Form 3520 must also be filed by U.S. persons who are treated as owners of any part of the assets of a trust under subpart E of Part I or subchapter J of Chapter 1; who received a distribution from a foreign trust; or who received large gifts during the tax year from a foreign person.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 1,320.

*Estimated Time per Respondent:* 54 hours 35 minutes.

*Estimated Total Annual Burden Hours:* 71,742.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of

<sup>38</sup> See "U.S. Relations with North Korea," ([www.state.gov/r/pa/ei/bgn/2792.htm](http://www.state.gov/r/pa/ei/bgn/2792.htm)).

<sup>39</sup> See "North Korea: Facts & Figures," Transparency International (<https://www.transparency.org/country/#PRK>).

<sup>40</sup> See "Defectors Detail How North Korea's Office 39 Feeds Leader's Slush Fund: Private Fund Underwrites Comfortable Lifestyles for Pyongyang's Elite," Wall Street Journal, September 15, 2014 ([www.wsj.com/articles/defectors-detail-how-north-koreas-office-39-filters-money-to-kims-private-slush-fund-1410823969](http://www.wsj.com/articles/defectors-detail-how-north-koreas-office-39-filters-money-to-kims-private-slush-fund-1410823969)); see also "Criminal Sovereignty: Understanding North Korea's Illicit International Activities," Strategic Studies Institute, March 2010.

([www.strategicstudiesinstitute.army.mil/pdf/files/pub975.pdf](http://www.strategicstudiesinstitute.army.mil/pdf/files/pub975.pdf))

<sup>41</sup> See E.O. 13551.

<sup>42</sup> "Treasury Designates Key Nodes of the Illicit Financing Network of North Korea's Office 39,"

public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2016.

**Sara Covington,**  
*IRS Tax Analyst.*

[FR Doc. 2016-13001 Filed 6-1-16; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting for the Electronic Tax Administration Advisory Committee (ETAAC)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Meeting notice.

**SUMMARY:** An open meeting of the Electronic Tax Administration Advisory Committee (ETAAC) will be conducted at the Internal Revenue Service Building in Washington, DC. The ETAAC will discuss recommendations for electronic tax administration which will be published in their Annual Report to Congress by June 30, 2016. The IRS will respond to these recommendations.

*Meeting Date:* The meeting will be held on Tuesday, June 21, 2016, beginning at 9:00 a.m. eastern time, ending at approximately 11:30 a.m.

**FOR FURTHER INFORMATION CONTACT:** Sean Parman at 202-317-6247 or Rose Smith at 202-317-6559, or email [etaac@irs.gov](mailto:etaac@irs.gov) to receive the meeting information. Please spell out all names if you leave a voice message.

**SUPPLEMENTARY INFORMATION:**

*Background:* The Internal Revenue Service established the Electronic Tax Administration Advisory Committee (ETAAC) in 1998 as a result of the Restructuring and Reform Act of 1998 (RRA '98). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing

tax and information returns. The ETAAC members convey the public's perceptions of the IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. The ETAAC's duties are to research, analyze, consider, and make recommendations on a wide range of electronic tax administrative issues and to provide input into the development and implementation of the strategic plan for electronic tax administration.

*Meeting Access:* The meeting will be open to the public. Interested members of the public may attend ETAAC's discussion of their recommendations. The public may also submit written comments about issues in electronic tax administration for the committee to consider analyzing later this fall to [etaac@irs.gov](mailto:etaac@irs.gov) no later than 12 p.m. eastern on June 15, 2016. Written statements received after this date may not be provided to or considered by the ETAAC until its next meeting.

Dated: May 24, 2016.

**Vicki L. Price,**

*Acting Director, Strategic and Analytic Services, Office of Online Services.*

[FR Doc. 2016-13002 Filed 6-1-16; 8:45 am]

**BILLING CODE 4830-01-P**



# FEDERAL REGISTER

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Part II

Department of Health and Human Services

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Administration for Children and Families

45 CFR Part 95 and Chapter III

Comprehensive Child Welfare Information System; Final Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**45 CFR Part 95**

**Administration for Children and Families**

**45 CFR Chapter XIII and Parts 1355 and 1356**

**RIN 0970-AC59**

**Comprehensive Child Welfare Information System**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule replaces the Statewide and Tribal Automated Child Welfare Information Systems (S/TACWIS) rule with the Comprehensive Child Welfare Information System (CCWIS) rule. The rule also makes conforming amendments in rules in related requirements. This rule will assist title IV-E agencies in developing information management systems that leverage new innovations and technology in order to better serve children and families. More specifically, this final rule supports the use of cost-effective, innovative technologies to automate the collection of high-quality case management data and to promote its analysis, distribution, and use by workers, supervisors, administrators, researchers, and policy makers.

**DATES:** This final rule is effective: August 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Terry Watt, Director, Division of State Systems, Children's Bureau, Administration on Children, Youth, and Families, (202) 690-8177 (not a toll-free call) or by email at [Terry.Watt@acf.hhs.gov](mailto:Terry.Watt@acf.hhs.gov). Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8:00 a.m. and 7:00 p.m. Eastern Time.

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

*Statutory Authority*

The statute at 42 U.S.C. 674(a)(3)(C) and (D) provides the authority for title IV-E agencies to access funding authorized under Title IV-E of the Social Security Act (title IV-E) for the planning, design, development, installation, and operation of a data collection and information retrieval system. The statute at 42 U.S.C. 674(c) includes the requirements a title IV-E agency must meet to receive federal financial participation (FFP) and further specifies the expenditures eligible for FFP.

*Regulatory History*

ACF published the existing rule at 45 CFR 1355.50 through 1355.57 in December 1993. In January 2012, ACF amended the SACWIS rule in response to passage of the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (Pub. L. 110-351) (Fostering Connections). Among many other provisions, Fostering Connections amended title IV-E of the Social Security Act (the Act) to include federally-recognized Indian tribes, tribal organizations and tribal consortia operating an approved title IV-E program. Through these amendments, the Tribal Automated Child Welfare Information System (TACWIS) became the designation for tribal systems meeting the requirements of §§ 1355.50 through 1355.57.

In the years since the SACWIS rule was published in 1993, child welfare practice changed considerably. It is challenging for state and tribal title IV-E agencies (as defined at § 1355.20) to support practices that may vary within a jurisdiction with a single comprehensive information system. Additionally, information technology (IT) has advanced. The advancements in IT provide state and tribal title IV-E agencies with tools to rapidly share data among systems supporting multiple health and human service programs with increased efficiency. To address these practice challenges and IT changes, and allow agencies to improve their systems, this rule no longer requires agencies to use a single comprehensive system and instead, supports the use of improved technology to better support current child welfare practice. With this flexibility, state and tribal title IV-E

agencies, as defined in § 1355.20, can build less expensive modular systems that more closely mirror their practice models while supporting quality data. Furthermore, IT tools now can be effectively scaled to support smaller jurisdictions such as federally-recognized Indian tribes, tribal organizations, and tribal consortia (tribes) at a reasonable cost.

**II. Notice of Proposed Rulemaking**

In developing the rule we engaged in an extensive consultation process. Starting in 2009, the Children's Bureau (CB) initiated a detailed analysis of the S/TACWIS rule to assess if there was a need to change it to better utilize newer technology and support the changing child welfare program. We examined approaches to encourage the implementation of information systems consistent with ACF's technology strategy of promoting program interoperability through data sharing; rapid, modular system development at lower costs; and greater efficiency through the adoption of industry standards. Our analysis also considered whether modifications were necessary to address changing business practice models, including the expanded use of private case managers, and approaches to provide flexibility to state and tribal title IV-E agencies in implementing child welfare systems. We solicited ideas from the public through a **Federal Register** notice on July 23, 2010 (75 FR 43188) and conducted a series of conference calls with interested stakeholder groups. We again solicited feedback through a **Federal Register** notice on April 5, 2011 and held a series of conference calls with interested stakeholder groups. Public comments in response to the 2010 and 2011 FR Notices are available for review at: <http://www.regulations.gov>. We issued a **Federal Register** notice on January 5, 2012 to announce that two tribal consultations concerning the S/TACWIS rule would be held on February 15 and 16, 2012. A full summary of the tribal consultation on child welfare automation can be found at: <https://www.acf.hhs.gov/programs/cb/resource/tribal-consultation-on-title-iv-e-information-systems-regulations>.

After gathering the information from consultation and conducting further internal deliberations, we published a notice of proposed rulemaking (NPRM) on August 11, 2015 (80 FR 48200-748229) outlining our CCWIS proposal. We publicized the NPRM through CB's Web site and announcements distributed to tribes, states, vendors, advocacy groups, and other associations. We conducted three



conference calls to provide these interested parties with an overview of the NPRM and encouraged them to submit comments. We received 40 substantive and unduplicated submissions containing approximately 309 comments and questions on the proposal. The commenters included representatives from 20 state child welfare agencies and 9 national child welfare organizations, other organizations, associations and advocacy groups, among others. We did not receive any comments from federally recognized Indian tribes, tribal consortia or tribal organizations.

The public comments conveyed support for many of the general CCWIS concepts, particularly increased flexibility in the design and configuration of systems to support different child welfare practices, the emphasis on data and data quality instead of specific functions, and support for modular, standardized designs. The most prevalent comments we received were requests for more specific guidance on what data elements must be maintained in CCWIS and exchanged with other agencies; additional details regarding the data quality standards and the scope, burden, and cost of data quality reviews; and requests for increased flexibility for required data exchanges. We address all substantive comments in the section IV, Section-by-Section Discussion of Comments and Regulatory Provisions.

### III. Overview of Final Rule

We did not significantly change the rule from the proposal in most areas. Although many of the thoughtful comments led us to reconsider aspects of the proposed CCWIS rule, we found compelling reasons to retain key elements of the proposed CCWIS rule. An overview of this final CCWIS rule, the changes made in response to comments and implementation timeframes follows. A more detailed discussion of the public comments and resulting changes is in section IV of the preamble.

#### A. Overview of the Rule and Changes Made in Response to Comments

This rule sets forth the requirements for an optional CCWIS. The major provisions of this rule include: (1) Providing title IV–E agencies with flexibility to determine the size, scope, and functionality of their information system; (2) allowing the agency to build a CCWIS to obtain required data from external information systems so that a copy of that data is then stored and managed in the CCWIS; (3) emphasizing data quality and requiring a new data

quality plan; (4) requiring new bi-directional data exchanges and use of electronic data exchange standards that strengthen program integrity; and (5) promoting more efficient and less expensive development of reliable systems that follow industry design standards including development of independent, reusable modules. This rule also includes other provisions that provide title IV–E agencies with flexibility. Compliance with the provisions in this rule are determined through ACF review and approval of a state's or tribe's Advance Planning Documents (APD) or a Notice of Intent, where applicable, and through the use of federal monitoring.

First, this rule provides title IV–E agencies with flexibility to build systems that align more closely to their business needs and practices by allowing each title IV–E agency to determine the size, scope, and functionality of their information system. The new CCWIS may: Contain all the functions required to collect and maintain CCWIS data (similar to a current S/TACWIS), be little more than a data repository that collects and exchanges data captured in other systems, or fall somewhere in between these two extremes. As discussed in section IV, these provisions of the rule remain unchanged from the NPRM.

Second, data may be obtained from external information systems so that a copy of that data is then stored and managed in CCWIS. Although this rule requires CCWIS to maintain (store and manage) the required data, it allows CCWIS to obtain required data that is captured in external information systems. The rule also requires that CCWIS be the source of data for federally required and other agency reports. The most prevalent comments we received regarding these provisions were requests for more specific guidance on what data elements must be maintained in CCWIS and exchanged with other agencies. However, as discussed in section VI, these provisions of the rule remain unchanged from the NPRM.

Third, this rule requires title IV–E agencies to develop and maintain a comprehensive data quality plan to monitor the title IV–E agency, and if applicable, child welfare contributing agency (CWCA) system(s) and processes to support complete, timely, accurate, and consistent data. The IV–E agency must also actively monitor, manage, and enhance data quality. This rule also includes new requirements to ensure that a CCWIS supports data quality by requiring agency reviews of automated and manual data collection processes,

and by requiring the title IV–E agency to provide continuous data quality improvement, based on its review findings. As a result of comments we received, we clarified the regulatory language in § 1355.52(d)(1)(i) of this rule that if two or more data quality standards apply to the same data (such as a federal standard and a state or tribal standard), ACF will expect the system to measure the more rigorous standard. In addition, to further clarify what data the title IV–E agency requests from CWCAs, in § 1355.52(d)(2)(iii), we specify in the regulatory language that the title IV–E agency request “current and historical CCWIS data” rather than “current and historical data.” A number of commenters expressed concern about the burden associated with annual data quality reviews. Although we do not agree that requiring annual data quality reviews imposes any substantial burden, we changed § 1355.52(d)(3) to instead require biennial title IV–E agency data quality reviews to provide title IV–E agencies with flexibility to maintain their current processes for such reviews, to the extent possible. We discuss these changes in detail in section IV.

Fourth, this rule requires a CCWIS to include new bi-directional data exchanges and use of electronic data exchange standards that strengthen program integrity. This rule also requires title IV–E agencies to use an electronic data exchange standard to improve efficiency, reduce duplicate data collection, and promote a common understanding of data elements. The most frequent comments we received requested increased flexibility for required data exchanges. As a result of comments we received, we changed the regulatory language in § 1355.52(e)(1) permitting only a single data exchange with each of the systems specified, to instead allow multiple data exchanges. In addition, to provide increased flexibility, we removed the requirement in § 1355.52(f)(2), which proposed to require that the data exchange standard must apply to internal data exchanges between CCWIS automated functions where at least one of the automated functions meets the requirements of § 1355.53(a). Finally, to correct an inconsistency between two paragraphs we made clarifying changes to § 1355.57(a)(2)(ii) and (b)(2)(ii). We discuss these changes in detail in section IV.

Fifth, the rule prioritizes more efficient and less expensive development of reliable systems that follow industry design standards. This rule requires CCWIS automated functions to be built as independent modules that may be reused in other

systems or be replaced by newer modules with more capabilities. The title IV–E agency must follow industry standards when designing and building the automated modules. As discussed in section IV, these provisions of the rule remain unchanged from the NPRM.

This rule also includes other provisions that provide title IV–E agencies with flexibility, such as a waiver process for title IV–E agencies to propose new approaches to designing IT systems and a transition period of 24 months. As discussed in section IV, these provisions of the rule remain unchanged from the NPRM.

Finally, compliance with provisions in this rule are determined through ACF review and approval of a state's or tribe's APD or a Notice of Intent, where applicable, and through the use of federal monitoring. As a result of comments we received, § 1355.58(a) further clarifies our intent that for development of a CCWIS only, ACF may suspend title IV–B and IV–E funding approved in the APD if ACF determines that the title IV–E agency fails to comply with the APD requirements. Some commenters were also concerned that the Notice of Intent required for projects under the \$5 million threshold was excessively burdensome. To clarify that we don't intend the Notice of Intent as requiring extensive planning, we revised § 1355.52(i)(1)(i) to clarify that an agency only needs to provide a narrative outlining the agency's approach instead of a detailed project plan including tasks, schedules, and resources. We discuss these changes in detail in section IV.

This rule will assist title IV–E agencies in developing systems that further contribute to improving outcomes for children and families with more flexible, modernized systems that support the efficient, economical, and effective administration of the plans approved under titles IV–B and IV–E of the Act.

#### B. Implementation Timeframe

This rule provides a transition period of 24 months from the effective date of the rule, which ends on August 1, 2018. During the transition period, the title IV–E agency with a S/TACWIS or non-S/TACWIS project must indicate whether it will: (1) Transition the S/TACWIS or non-S/TACWIS to a CCWIS; (2) become a non-CCWIS; or (3) build a new CCWIS. The title IV–E agency does not need to finish the transition within the 24 months to be a CCWIS. A new CCWIS may be built at any time. The requirements that title IV–E agencies must comply with during the transition period are set forth in § 1355.56. As

discussed in section IV, the transition period set forth in the rule remains unchanged from the NPRM.

#### IV. Section-by-Section Discussion of Comments and Regulatory Provisions

We did not significantly change the CCWIS final rule from the NPRM. Although many of the thoughtful comments led us to reconsider aspects of our proposal and make several technical revisions, we found compelling reasons to retain our proposal's provisions of the CCWIS proposed rule. Public comments and our responses are discussed below, with general comments first followed by comments organized by the section of the rule that they address.

##### General Comments

*Comment:* One commenter asked that we specify the scope of flexibility provided title IV–E agencies to tailor CCWIS to meet their administrative, programmatic, and technical environments.

*Response:* We would like to clarify that we cannot specify the scope of flexibility as each title IV–E agency's decisions and requirements determine the flexibility provided to a specific project. We provide more detail in our responses in the following sections concerning the flexibility provided by this rule. We note that we will review and respond to agency plans submitted with the documentation required per § 1355.52(i)(1) on a case-by-case basis.

*Comment:* One commenter noted that it may be difficult in states where different counties have different capabilities to implement a CCWIS all at once. The commenter recommended the rule permit states to build CCWIS in stages.

*Response:* We would like to clarify that the APD rules permit title IV–E agencies to build CCWIS in stages.

*Comment:* One commenter noted that they were unable to identify a reduction in system development effort between SACWIS and CCWIS.

*Response:* We would like to clarify that S/TACWIS required title IV–E agencies to build a system with automated functions to support all child welfare business practices. This rule permits title IV–E agencies to use automated functions in other existing systems to provide CCWIS data rather than building automated functions to collect the data.

##### Purpose. (§ 1355.50)

We specify in § 1355.50 that the purpose of §§ 1355.50 through 1355.59 is to set forth the requirements for receiving FFP as authorized under

section 474(a)(3)(C) and (D) and 474(c) of the Act for the planning, design, development, installation, operation, and maintenance of a CCWIS.

*Comment:* One commenter requested that we require all title IV–E agencies to implement a CCWIS.

*Response:* We did not make changes to this provision in response to this comment because the enabling statute at section 474(a)(3)(C) and (D) and 474(c) of the Act does not provide authority to require title IV–E agencies to implement a data collection and information retrieval system.

##### Definitions Applicable to Comprehensive Child Welfare Information Systems (CCWIS). (§ 1355.51)

We specify in § 1355.51 definitions applicable to §§ 1355.50 through 1355.59.

##### Case Management

*Comment:* A number of commenters requested we define the term “case management” because CCWIS requires case management data and information on case management activities. One commenter recommended we limit the definition to the development and oversight of case plans for children and families. Another commenter noted that that state's law mandated that only state or county employees could provide case management services.

*Response:* We did not make any changes to address these comments. ACF has not defined the term “case management” because states and tribes define “case management” differently due to varying laws, policies, and practices. The rule continues this flexibility.

Although title IV–E agencies have their own definitions and describe case management activities in a cost allocation plan (CAP) or cost allocation methodology (CAM), in the NPRM we identified activities considered “case management” to include information such as child and family histories, assessments, contact notes, calendars, services recommended and delivered, eligibility for programs and services, and client outcomes. In addition, commenters may look to other examples of case management activities provided in ACF guidance, including:

- The S/TACWIS rule published in 1993 described case management to include: Determining eligibility and supporting the caseworker's determination of whether continued service is warranted, the authorization and issuance of appropriate payments, the preparation of service plans, determining whether the agency can

provide services, authorizing services and managing the delivery of services. (80 FR 26832)

- Section 106 of CAPTA provides examples of “case management” including “ongoing case monitoring, and the delivery of services and treatment provided to children and their families.”

- The title IV–E quarterly financial reporting form (the CB–496), provides examples of case management activities including referral to services, preparation for and participation in judicial proceedings and placement of the child, and accessing the Federal Parent Locator Service to search for relatives.

#### Child Welfare Contributing Agency

We define “child welfare contributing agency” as a public or private entity that, by contract or agreement with the title IV–E agency, provides child abuse and neglect investigations, placements, or child welfare case management (or any combination of these) to children and families.

*Comment:* A few commenters requested changes in the definition of child welfare contributing agency (CWCA). Some suggested narrower definitions, such as a definition to exclude foster family agencies that provide for the daily care and supervision of foster children as well as provide supportive services because some of these foster family agencies may not have the capacity to collect child welfare service data and this may result in greater costs to agencies.

*Response:* We did not make any changes to the definition of CWCA to exclude foster family agencies from the definition to the extent they provide child abuse and neglect investigations, placements, and child welfare case management. This is because the data related to these activities conducted by a foster family agency is CCWIS data (as required by § 1355.52(b)) needed for the efficient, economical, and effective administration of the title IV–B and title IV–E programs.

We understand that, in addition to child welfare services, some CWCA may provide other supportive services such as substance abuse treatment and parent training. Title IV–E agencies are not required to maintain in a CCWIS supportive service data from CWCA. We also note that title IV–E agencies may support CWCA data collection capacity with CCWIS rather than requiring CWCA to develop a separate system at additional cost.

*Comment:* Some commenters want an expanded definition of CWCA to include agencies providing services

other than child abuse and neglect investigations, placements, or child welfare case management. One commenter suggested we expand the definition of CWCA to include agencies providing services such as substance abuse treatment and parenting classes. Other commenters suggested the definition accommodate adding, at the title IV–E agency’s discretion, other programs and systems.

*Response:* We did not expand the definition in response to these comments. While many title IV–E agencies work with agencies providing other services such as substance abuse treatment and parenting classes, expanding the definition to include agencies providing services other than child abuse and neglect investigations, placements, or child welfare case management would increase the burden on title IV–E agencies by requiring them to collect this data electronically from an expanded array of service providers. However, title IV–E agencies may, at their discretion, collect other data electronically from CWCA or other entities and include it in CCWIS per our rule authorizing title IV–E agencies to implement optional data exchanges (§ 1355.54).

*Comment:* One commenter requested that the rule clarify how the definition of child welfare contributing agency applies to county administered states in which county public entities (County Children and Youth Agencies) provide child abuse and neglect investigations, placements, or child welfare case management services or may contract with private agencies for these services.

*Response:* We would like to clarify that counties are political subdivisions of the state and that the single state title IV–E agency designated in the state’s title IV–B and IV–E plan supervises the administration of county administered IV–B and IV–E programs. Therefore, counties in county administered states are not considered CWCA. Section 471(a)(2) of the Act and 45 CFR 205.100 provides the authority and parameters by which a single state title IV–E agency may delegate the administration of the title IV–E program to the state’s political subdivisions and local agencies or offices. We recognize that political subdivisions and organizational structures within states and tribes vary, and we will provide further technical assistance on a case-by-case basis.

We received no comments on other definitions in § 1355.51 and do not make any changes to the definitions in the final rule.

#### CCWIS Project Requirements (§ 1355.52)

In paragraph (a), we specify that the system must support the efficient, economical, and effective administration of the title IV–B and IV–E plans.

*Comment:* Several commenters recommended supplementing this requirement with language indicating that CCWIS should support outcomes for families and children, improved practice, and meeting agency needs.

*Response:* We did not make a change to this paragraph because this requirement reiterates statutory language. However, we agree with the commenter that CCWIS should support outcomes for families and children, improved practice and meeting agency needs, and thus the rule supports this requirement. For example, see the requirements under § 1355.52(b), (c) and (e) which require that data, reporting, and data exchanges support these goals by collecting, reporting, and exchanging data to support child safety, permanency, and well-being.

*Comment:* One commenter noted we used the terms “efficient,” “reasonable” and “appropriate” in the NPRM and asked how we will measure these qualities.

*Response:* We would like to clarify that we determine “efficient,” “reasonable” and “appropriate” as described in each title IV–E agency’s APD.

In paragraph (a)(1), we specify that the system must improve program management and administration by maintaining all program data required by federal, state, or tribal law or policy.

*Comment:* We received one comment requesting clarification on the phrase “maintaining all program data required by federal, state or tribal law or policy.”

*Response:* We consolidated this clarification with related questions about CCWIS data. Please see our responses in paragraph (b).

In paragraph (a)(2), we proposed that the system must appropriately apply computer technology.

*Comment:* One commenter recommended revising our proposed language in the NPRM to remove the term “computer” from this paragraph and elsewhere in the rule, as the term does not accurately reflect the technologies available or anticipated for the future.

*Response:* We agree that the preferable terminology to the term “computer” is “information” and have made the change in this paragraph. This is the only revision we find necessary as the term does not appear elsewhere in §§ 1355.50 through 1355.59. It appears

once in 45 CFR 95.625, however, we are not changing the term here to preserve consistency with the other references to “computer” in Part 95.

In paragraph (a)(3), we specify that the project must not require duplicative application system development or software maintenance.

We received no comments on this paragraph and are not making changes in the rule.

In paragraph (a)(4), we specify that project costs must be reasonable, appropriate, and beneficial.

We received no comments on this paragraph and are not making changes in the rule.

In paragraph (b), we specify the data the title IV–E agency’s CCWIS must maintain.

*Comment:* Several commenters recommended modifying the requirement to permit the use of a centralized data warehouse (in addition to a CCWIS production database) that is part of the overall CCWIS design.

*Response:* We would like to clarify that the title IV–E agency may maintain CCWIS data in a CCWIS production database (which is a database processing CCWIS transactions) and a data warehouse (which is a database used for reporting and data analysis) provided all CCWIS automated functions seamlessly access data from both the database and data warehouse. For example, when generating a report or completing a task that requires data from both the database and data warehouse, CCWIS must be able to immediately access needed data.

*Comment:* Some commenters noted it was burdensome to store all CCWIS data in the CCWIS and recommended allowing CCWIS data to be stored in other systems, such as CWCA systems.

*Response:* Storing data within CCWIS ensures the title IV–E agency controls and safeguards the data. We are not making a change in response to this comment because CCWIS data that only resides in CWCA systems could be lost under a variety of circumstances, such as if the CWCA goes out of business, or the contract with the title IV–E agency ends abruptly. Data maintained in other systems could also be lost if the system is upgraded or replaced. Also, storing data in the CCWIS instead of in other systems facilitates continuity of care because CCWIS can share the CCWIS data collected by one CWCA with others as children and families move between jurisdictions and providers. This requirement is less burdensome than the S/TACWIS rules, which required all CWCAAs to use the S/TACWIS, because it provides title IV–E agencies the

option to allow CWCAAs to use systems other than CCWIS.

*Comment:* Commenters expressed concerns about the increased data collection burden due to the amount of data the title IV–E agency’s CCWIS must maintain. For example, some commenters cited the challenges in collecting required consistent and uniform data from CWCAAs.

*Response:* We are not making a change in response to this comment. The requirement for a CCWIS to maintain the specific data described in the paragraph is unchanged from the data captured by the S/TACWIS required functions. We believe burden is reduced because, unlike S/TACWIS, CCWIS is not required to directly capture all CCWIS data. Title IV–E agencies may either include the data capturing functions in CCWIS or permit other systems to capture the data and provide it to CCWIS via data exchanges per § 1355.52(e). We will provide technical guidance to assist agencies with implementing the new flexibility to capture required consistent and uniform data from CWCAAs.

We would like to clarify that the paragraphs (b)(1)(i) through (iv) and paragraphs (b)(2) through (4) define categories of data that may overlap, and are not mutually exclusive lists of data. For example, some of the federally required Adoption and Foster Care Analysis and Reporting System (AFCARS) and National Youth in Transition Database (NYTD) data (such as client demographic data) may be required by states and tribes to meet agency-specific needs. This reuse of data across multiple requirements reduces burden.

*Comment:* A number of commenters requested clarification on how a CCWIS is required to “maintain” data.

*Response:* In the NPRM preamble, we explained that maintaining CCWIS data (which is data needed for federal or agency purposes, as defined in this paragraph) includes storing and sharing data while monitoring data quality. Storing data within CCWIS ensures the title IV–E agency controls and safeguards the data. CCWIS storage may include a data warehouse. CCWIS must share the stored data, if permissible, with other systems as needed. Sharing CCWIS data helps other programs and providers coordinate services to children and families. CCWIS must monitor the quality of stored data as described in paragraph (d)(2). High quality data supports the delivery of effective, economical, and effective services, which support improved outcomes for clients.

In paragraph (b)(1) we specify that the CCWIS maintain all federal data required to support the efficient, effective, and economical administration of the programs under titles IV–B and IV–E of the Act. In paragraphs (b)(1)(i) through (iv), we specify that CCWIS must maintain data required for: Ongoing federal child welfare reports, title IV–E eligibility determinations, authorizations of services and other expenditures that may be claimed for reimbursement under titles IV–B and IV–E; supporting federal child welfare laws, regulations, and policies; supporting federal audits, reviews, and other monitoring activities.

*Comment:* A few commenters were concerned that CCWIS data and the rules associated with the data may not be consistent with federal reporting requirements.

*Response:* We would like to clarify that CCWIS data needed for federal reporting must comply with, and thereby be consistent with, federal reporting requirements.

*Comment:* Many commenters requested we specify the federal data that CCWIS must maintain in paragraphs (b)(1)(i) through (iv). Some commenters suggested we work with agencies to establish a set of required data and provide agencies with the flexibility to determine what additional data to collect.

*Response:* We are not making any changes in response to these comments because the federal data that title IV–E agencies must maintain in CCWIS is already defined in federal child welfare laws, regulations, and policies. The data requirements list categories of data rather than specifying a comprehensive set of federal data because we determined that such specificity would require CCWIS regulatory amendments each time there is a change in federal law and policy. This paragraph already provides title IV–E agencies with the flexibility to design CCWIS to meet specific state and tribal needs by collecting data, in addition to the required federal data, the agency requires to fulfill its mission and efficiently, economically, and effectively administer its child welfare programs.

Although we are not making any changes in response to these comments, we would like to clarify the types of data included in paragraphs (b)(1)(i) through (iv).

In paragraph (b)(1)(i), we specify that CCWIS maintain data required for ongoing federal child welfare reports. However, the federal report data CCWIS must maintain varies depending on the requirements for the federal report as

shown in the following three examples: (1) All AFCARS data must be maintained in CCWIS per section 474(a)(3)(C)(i) of the Act; (2) NYTD outcomes information may be maintained in external systems as described in Program Instruction ACYF-CB-PI-10-04, although CCWIS must maintain NYTD case management data; (3) Financial information for the CB-496, such as training costs, demonstration project costs, and administrative costs, may be maintained in a separate financial system that exchanges data with CCWIS per paragraph (e)(1)(i). Other data, such as the average monthly number of children receiving title IV-E Foster Care maintenance assistance payments, may be derived from CCWIS case management and placement records.

In paragraph (b)(1)(ii), we specify that CCWIS maintain data for title IV-E eligibility determinations, authorizations of services, and expenditures under title IV-B and IV-E. We would like to clarify that data necessary for title IV-E eligibility determinations includes data such as the factors used to demonstrate the child would qualify for AFDC under the 1996 plan, placement licensing and background check information, and court findings. Data required for authorizations of services and other expenditures under titles IV-B and IV-E includes data such as documentation of services authorized, records that the services were delivered, payments processed, and payment status, including whether the payment will be allocated to one or more federal, state, or tribal programs for reimbursement, and the payment amount allocated. As noted in our response to paragraph (b)(1)(i), financial information may be maintained in a financial system exchanging data with CCWIS.

In paragraph (b)(1)(iii), which requires CCWIS to maintain data documenting interactions with and on behalf of clients that the title IV-E agency determines is needed to support federal child welfare laws, regulations, and policies, we would like to clarify that this includes data such as case management information, recommended services, placement data, and licensing information on foster care providers. We are not requiring CCWIS to maintain policy documents, program assessments, and program-wide reports such as title IV-E plans. However, we encourage title IV-E agencies to supplement such reports with CCWIS data as needed. For example, agencies may incorporate demographic profiles of the child welfare population into the Child and Family Service Plan or use

data on delivered services in the Annual Progress and Services Report.

In paragraph (b)(1)(iv), which specifies case management data, we would like to clarify that this includes data such as case management data collected in the course of case work with clients (such as abuse and neglect reports, case plans, and placement histories) that may be needed for a Child and Family Services Review (CFSR). However, CCWIS is not required to maintain the supplemental information reviewers use such as client surveys, focus group results, pilot data manually collected, and interview narratives.

Finally, we would like to clarify that a federal review may lead to requirements to collect new data elements. For example, if a CFSR review finds that the title IV-E agency must collect certain child welfare data to effectively monitor cases, this would become required data for that agency's CCWIS.

We will use the federal laws, regulations, and policies effective at the time of a CCWIS review to determine compliance with paragraph (b) and paragraphs (b)(1)(i) through (iv). We will provide technical assistance as federal data requirements change.

In paragraph (b)(2), we specify that the CCWIS maintain the data to support state or tribal laws, regulations, policies, practices, reporting requirements, audits, program evaluations, and reviews.

*Comment:* Commenters expressed concern with the burden associated with the requirements for the CCWIS to maintain specific state and tribal data identified in the paragraph.

*Response:* We do not agree that the burden will necessarily increase under this rule. Although this rule permits title IV-E agencies to maintain additional data in the CCWIS that the state or tribe feels is needed to administer its child welfare programs, the requirements under this rule do not exceed the burden currently required in a S/TACWIS. We encourage title IV-E agencies to reduce the data burden by verifying that all data maintained in the CCWIS is required to support a clearly defined federal, state, or tribal purpose.

*Comment:* Several comments asked how we would determine compliance with this requirement.

*Response:* We will determine compliance with this requirement by reviewing state and tribal laws, regulations, policies, and practices in consultation with title IV-E agency representatives. For example, to determine if CCWIS maintains the data necessary to support state or tribal practices, we will consider the

information needs of CWCAs and other title IV-E systems external to CCWIS, as described in paragraph (e)(1)(iv). If we document a pattern of CWCAs re-entering information clients provided to other CWCAs, that may suggest that the data should be in CCWIS and shared with CWCAs to prevent the duplicate entry of needed data. In such circumstances, we will work with the title IV-E agency to determine if the data should be classified as CCWIS data and exchanged with the IV-E agency's CCWIS.

*Comment:* Some commenters recommended specific data that we should require title IV-E agencies to maintain in the CCWIS, including data concerning treatment for substance abuse, mental health, other forms of treatment, and treatment outcomes.

*Response:* We are not making changes as a result of these comments. We would like to clarify that title IV-E agencies may maintain treatment data in its CCWIS as long as it supports a state or tribal agency need. However, we are not requiring all title IV-E agencies to maintain this data to preserve agency flexibility to implement a CCWIS tailored to their needs.

*Comment:* Some commenters requested that the CCWIS rule state that we support the continuous improvement and evolution of child welfare practice with flexible child welfare systems.

*Response:* We agree that this paragraph's requirement that CCWIS support state and tribal laws, regulations, policies, and practices promotes the continuous improvement and evolution of child welfare practice.

In paragraph (b)(3), we specify that, for states, the CCWIS maintain data to support specific measures taken to comply with the requirements in section 422(b)(9) of the Act regarding the Indian Child Welfare Act.

*Comment:* One commenter recommended that states use electronic data exchanges with tribes to improve Indian Child Welfare Act (ICWA) compliance.

*Response:* ACF is committed to offering technical assistance to states regarding the implementation of ICWA. We agree that electronic data exchanges between states and tribes are beneficial. However, we are not making a change to this paragraph because we want to maintain flexibility to permit states and tribes to determine the data sharing approach appropriate for different circumstances. However, we note that optional electronic data exchanges between CCWIS and tribal systems are permitted per § 1355.54.

*Comment:* One commenter recommended we define specific data elements to address ICWA protections for children served by tribal child welfare systems and strengthen data related to ICWA eligibility.

*Response:* On April 7, 2016, ACF published a supplemental notice of proposed rulemaking (SNPRM) focused on the collection and reporting of additional ICWA-related data elements in AFCARS (81 FR 20283). Based on this separate rulemaking process that has yet to be finalized, we are not making changes to this paragraph. However, it is important to emphasize that CCWIS must maintain data to support specific measures taken to comply with the requirements in section 422(b)(9) of the Act regarding the Indian Child Welfare Act and AFCARS regulations. As AFCARS regulations are updated to include ICWA-related data elements or other changes, the CCWIS regulations require title IV–E agencies to update their data collection systems to meet new standards, per section 474(a)(3)(C)(i) of the Act.

In paragraph (b)(4), we specify that the CCWIS maintain, for each state, data for the National Child Abuse and Neglect Data System (NCANDS).

We received no comments on this paragraph and made no changes in the rule.

In paragraph (c), we specify requirements for using the CCWIS data in paragraph (b) for required reports.

*Comment:* Several commenters asked if the reporting requirements limited CCWIS to a single production database. They recommended that we modify the requirement to permit the use of a data warehouse to support data analysis and reporting functions.

*Response:* We did not change this requirement because this rule does not prohibit maintaining CCWIS data in a data warehouse.

In paragraph (c)(1), we specify that the system generate, or contribute to, title IV–B and IV–E federal reports according to applicable formatting and submission requirements using data maintained in the CCWIS.

*Comment:* One commenter requested we incorporate key elements from AFCARS into this rule because it would help match up AFCARS requirements with CCWIS requirements.

*Response:* We did not make a change in response to this comment because paragraph (c) already requires CCWIS to support federal reports that support programs and services described in title IV–B and title IV–E of the Act, including AFCARS. This approach allows for AFCARS rules to change, without also requiring the CCWIS rules to change. On

February 9, 2015, ACF published a Notice of Proposed Rulemaking to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations to modify the requirements for title IV–E agencies to collect and report data to ACF on children in out-of-home care and who were adopted or in a legal guardianship with a title IV–E subsidized adoption or guardianship agreement. On April 7, 2016, ACF published a Supplemental Notice of Proposed Rulemaking that proposed to require that state title IV–E agencies collect and report additional data elements related to the Indian Child Welfare Act of 1978 (ICWA) in the AFCARS.

In paragraph (c)(2), we specify that the system generate or contribute to reports that support programs and services described in title IV–B and title IV–E of the Act and are needed to support state or tribal child welfare laws, regulations, policies, practices, reporting requirements, audits, and reviews using data maintained in CCWIS.

*Comment:* Some commenters interpreted this paragraph as requiring CCWIS to produce reports that are not needed for child welfare case management, such as title IV–B reports and title IV–E quarterly financial reporting and expenditures. Commenters expressed concern that the reporting requirements were too expansive.

*Response:* We did not change the reporting requirements to address this comment. We would like to clarify that while we require CCWIS to provide CCWIS data as needed for reports specified in paragraphs (c)(1) and (2), CCWIS is not required to produce every agency report. If CCWIS maintains a subset of a required report's data, CCWIS is not required to generate the complete report, but must provide the data maintained in the CCWIS for incorporation into the report. Agencies may decide how to provide the data. For example:

- CCWIS may transmit available NYTD data to a system that collects NYTD survey data and generates the federal report.
- CCWIS may support financial audits by providing data on authorized placements and services to a data warehouse where it is merged with data on related expenditures to create audit trails.
- CCWIS may provide a hardcopy summary of demographic and placement statistics that staff add to a narrative report demonstrating progress on CFSR goals.

- Data analysts may use a spreadsheet of CCWIS data to develop reports on trends in child welfare.

If CCWIS maintains all the data required for a report, the report must be generated entirely from that data. For example, even if CWCAs collect AFCARS data, the AFCARS report must be generated from the data provided by CWCAs and maintained in CCWIS.

In paragraph (d), we describe the data quality requirements for CCWIS.

In paragraph (d)(1) we specify the CCWIS data quality and confidentiality requirements applicable to CCWIS data described in § 1355.52(b).

*Comment:* We received a general comment requesting that we specify the data quality standards so that title IV–E agencies can estimate the effort to meet the data quality standards.

*Response:* We did not make any changes as a result of this comment. We discuss data quality standards in our responses below. However, we agree that title IV–E agencies should evaluate the effort needed to develop a fully complaint CCWIS. To provide sufficient time for this evaluation, we allow a 2-year transition period as described in § 1355.56. We also intend to provide technical assistance and guidance regarding data quality to assist title IV–E agencies.

*Comment:* A few commenters asked that we clarify the expectations for managing the quality of data received via a bi-directional data exchange.

*Response:* We did not make any changes as a result of this comment. Title IV–E agencies may take into account data sources when establishing data quality standards and how data should be verified and used. Different standards may be appropriate for different sources. For example, title IV–E agencies can establish data quality standards applicable to CWCAs in contracts or agreements and require CWCAs to conform to the standard. IV–E agencies should follow their state or tribal governance procedures for defining expectations for data quality standards between CCWIS and other agencies such as title IV–D, title IV–A, education, and the courts. While we encourage programs to collaborate to improve data quality, we do not have the authority to require other programs to comply with title IV–E agency data quality standards and defer to the state or tribe's governance structures to address issues with the quality of data received via a bi-directional data exchange. We intend to offer technical assistance related to bi-directional data exchanges to assist program interoperability.

*Comment:* One commenter recommended that the rule specify data security requirements. A few commenters asked if CCWIS, like S/TACWIS, established archiving and purging requirements.

*Response:* We did not make any changes to paragraph (d) because the data security, archiving, and purging requirements are addressed in the APD rule at 45 CFR 95.621(f) and the program rule at 45 CFR 92.42. The rule at § 1355.30 applies the requirements at 45 CFR 92.42 and 95.621(f) to programs funded under titles IV–B and IV–E of the Act.

In paragraph (d)(1)(i), we proposed that CCWIS data meet the applicable federal, and state or tribal standards for completeness, timeliness and accuracy.

*Comment:* A number of commenters requested that ACF define the data quality standards for CCWIS data elements. Some recommended that ACF partner with title IV–E agencies and other stakeholders to define the standards.

*Response:* We did not make changes to the rule as a result of these comments. We would like to clarify that the federal data quality standards are defined in federal laws, regulations, and policies including, but not limited to, the AFCARS rule at § 1355.40 and the NYTD rule at § 1356.80. These national standards apply to all title IV–E agencies. We will not define the data quality standards for state or tribal data as those standards are determined by each state's or tribe's laws, regulations, policies, and practices. Imposing national data quality standards for state and tribal data would prevent a title IV–E agency from implementing a CCWIS tailored to its needs.

*Comment:* A number of commenters requested additional information on how ACF will evaluate and measure data quality. One commenter noted that without this information it would be difficult to define expectations for the program staff.

*Response:* We made a change to the rule to address this comment by inserting the phrase “the most rigorous of” after “meet” so the paragraph reads that the CCWIS data described in paragraph (b) of this section must: “Meet the most rigorous of the applicable federal, and state or tribal standards for completeness, timeliness, and accuracy.”

This means if two or more standards apply to the same data (such as a federal standard and a state or tribal standard), ACF will expect the system to measure the more rigorous standard. For example, if one timeliness standard required updating certain CCWIS data

in seven days and a second standard sets a two-day limit, ACF will expect that the system apply the two-day standard when evaluating the quality of the required data. Designing the CCWIS to measure or support a more rigorous standard will allow the IV–E agency to build systems to support their need without affecting federal reviews that focus on a less rigorous standard.

Concerning the standards we will apply, we would like to clarify that we will use the more rigorous standards upon which the system was designed. We will provide technical assistance as needed to clarify these data quality standards.

Title IV–E agencies must submit their proposed data quality standards in the data quality plan required in paragraph (d)(5). ACF will approve the standards or note needed changes.

*Comment:* A commenter asked if we were continuing the SACWIS requirements concerning auditability and data freezing.

*Response:* We would like to clarify that freezing data to preserve data at a specific point in time for later audits (such as freezing child abuse and neglect reports that may be subject to internal or judicial review) is an example of maintaining complete and accurate data that is covered by this requirement.

*Comment:* One commenter asked for clarification on how data quality standards would apply in circumstances where data is missing or unknown, such as when a reporter of a child abuse or neglect incident does not know certain information.

*Response:* We would like to clarify that the title IV–E agency may specify conditions where data is not required or to indicate data is unknown in the data quality standard.

In paragraph (d)(1)(ii), we specify that data be consistently and uniformly collected by CCWIS and, if applicable, child welfare contributing agency systems.

In paragraph (d)(1)(iii), we specify that the title IV–E agency must exchange and maintain CCWIS data in accordance with the confidentiality requirements of applicable federal and state or tribal laws.

In paragraph (d)(1)(iv), we specify that the CCWIS data described in revised § 1355.52(b) must support child welfare policies, goals, and practices.

We did not make any changes to paragraphs (d)(1)(ii) through (iv) in the rule. We received no comments other than comments requesting we specify the data supporting child welfare policies and practice, which we

responded to in our responses to paragraph (b).

In paragraph (d)(1)(v), we specify that the CCWIS data described in revised § 1355.52(b) must not be created by default or inappropriately assigned.

*Comment:* One commenter requested we modify this requirement to permit default data that is accurate in all cases. The commenter gave examples of pre-filling: (1) The state name with the state in which the case worker resides; (2) pre-populating a worker's supervisor's name; and (3) pre-filling other fields based on previously entered data.

*Response:* We are not making a change based on this comment because all examples demonstrate the automatic calculation of data based on information previously known to the system, which is allowable, rather than an automatic creation of the same default data in all circumstances, which is prohibited.

In paragraph (d)(2), we specify that the title IV–E agency implement and maintain automated functions in CCWIS to maintain data quality.

*Comment:* One commenter noted that the required automation support for data quality contradicted the rule's goals of requiring outcomes but not requiring functionality.

*Response:* We would like to clarify that while the rule emphasizes outcomes, paragraph (d) and the following sub-paragraphs require certain automated functionality, including automated functions to support data quality. Supporting data quality is critical to improved outcomes for children and families.

*Comment:* A few commenters noted that the rule should not mandate specific automated functions but permit title IV–E agencies to implement automated functions that most efficiently and effectively meet data quality goals.

*Response:* We are not making changes in response to this comment because the requirements in paragraphs (d)(2)(i) through (v) do not mandate specific automated functions but provide flexibility by allowing agencies to determine the most efficient and effective methods to support data quality.

In paragraph (d)(2)(i), we specify that CCWIS regularly monitor CCWIS data quality through automated functions.

*Comment:* Several commenters requested we specify the metrics and standards we will use when auditing title IV–E agency compliance with this requirement and if those metrics and standards go beyond what is included in the agency's state plan. Commenters recommended audits focus on the most critical data elements.



*Response:* We would like to clarify that we will use the title IV–E agency’s data quality plan as the basis for the metrics and standards when determining agency compliance with the data quality requirements, including this requirement. We encourage agencies to propose efficient, economical, effective strategies in their plans, such as targeting critical data elements for greater data quality efforts.

ACF will assess the effectiveness of the agency’s data quality plan in a variety of ways including review of the data quality status reports described in paragraph (d)(5)(ii) and on-site reviews described in § 1355.55.

*Comment:* One commenter asked us to clarify the anticipated impact of the requirement to actively monitor data.

*Response:* We anticipate that active automated data quality monitoring will increase the efficiency of the data quality reviews and reduce the need for manual monitoring by staff. Information technology efficiently supports data quality by performing routine tasks quicker and more consistently than staff. CCWIS can proactively review all data and flag potential data quality problems requiring further investigation. This increases worker effectiveness by enabling workers to focus on solving data quality problems rather than sifting through data to identify errors.

The improved data quality will support more accurate reporting and help agencies better assess and serve children and families.

In paragraph (d)(2)(ii), we specify that the CCWIS supports data quality with automated functions to alert staff to collect, update, correct, and enter CCWIS data.

*Comment:* Several commenters recommended we delete the specific requirements for title IV–E agencies to develop “alerts, reports, and other appropriate tools” and replace it with language that supports state discretion and flexibility.

*Response:* We did not make any changes as a result of these comments because paragraph (d)(2)(ii) requires only that the agency use automated functions to alert staff for certain actions.

The NPRM preamble language commenters quoted serves merely as examples of how agencies may choose to implement the requirement. Title IV–E agencies may use other methods to alert staff.

In paragraph (d)(2)(iii), we require that the IV–E agency’s CCWIS includes automated functions to send electronic requests to child welfare contributing

agency systems to submit current and historical CCWIS data to the CCWIS.

*Comment:* Commenters requested we specify the data the title IV–E agency requests from CWCAs. Some commenters suggested this data focus on NCANDS, AFCARS, and NYTD data related to safety, permanency, and well-being.

*Response:* We made a change to the rule to address this comment and specify that the title IV–E agency request “current and historical CCWIS data” rather than “current and historical data.” We define CCWIS data in paragraph (b).

*Comment:* One commenter noted that some CWCA systems may not have the capacity to receive an automated notification of missing data.

*Response:* We recognize that some CWCA systems may not have the capacity to receive automated notifications from CCWIS as required by this paragraph. As such, we would like to clarify that the title IV–E agency may require CWCAs to use CCWIS if a CWCA system does not have the capacity to receive automated notifications from CCWIS as required by this paragraph.

In paragraph (d)(2)(iv), we specify that a title IV–E agency implement and maintain automated functions in the CCWIS that prevent, to the extent practical, the need to re-enter data already captured or exchanged with the CCWIS.

*Comment:* One commenter requested a definition of duplicate data entry.

*Response:* We would like to clarify that duplicate data entry is the manual reentry of data already captured by either the CCWIS or another system required to provide the data to CCWIS. We note that this is the same definition used during S/TACWIS reviews.

In paragraph (d)(2)(v), we specify that CCWIS must generate reports of continuing or unresolved CCWIS data quality problems.

*Comment:* One commenter recommended removing this paragraph and replacing it with language supporting agency discretion and flexibility to support data quality.

*Response:* We are not making any changes to this requirement in response to the comment because automated CCWIS reports are an efficient method to monitor and improve data quality.

We also note that this requirement already provides sufficient latitude for title IV–E agencies to decide how best to identify continuing or unresolved CCWIS data quality problems. As an example, the agency may determine report formats, frequency, distribution or other specifications that support

reporting mechanisms tailored to their needs.

In paragraph (d)(3), we proposed annual title IV–E agency data quality reviews and what the reviews would entail.

*Comment:* In the context of the CCWIS data quality reviews, a commenter asked if there would be other reviews and if so, what would be the frequency of those reviews.

*Response:* This is the only required CCWIS data quality review.

*Comment:* A number of commenters asked if the data quality reviews are conducted by ACF, the title IV–E agency, or another party.

*Response:* We would like to clarify that the title IV–E agency conducts the data quality review.

*Comment:* A number of commenters asked for clarification on what activities and processes are required to be part of the data quality review.

*Response:* We would like to clarify that the title IV–E agency defines the review scope, activities, and processes in the data quality plan submitted to ACF for approval per paragraph (d)(5).

The activities and processes for the data quality review established by the title IV–E agency and approved by ACF must meet the requirements of paragraph (d)(3). The data quality review may include activities such as reviewing a sample of case records, interviews with select state and child welfare contributing agency staff, an evaluation of automated edit checks, and a review of data quality reports. Some data quality activities, such as automated processes, may be continuous while other activities may occur one time during the biennial review period.

*Comment:* Some commenters asked if ACF assumptions about child welfare practices, such as the scope of child welfare case management, determine the data quality and data quality review requirements.

*Response:* We would like to clarify that we avoid making general assumptions about child welfare practices because those practices vary among title IV–E agencies. We agree that child welfare practices determine the data requirements, which is why the rule requires that the title IV–E agency define CCWIS data and data quality standards and activities to support child welfare practices within the title IV–E agency’s jurisdiction.

*Comment:* Many commenters asked how the data quality reviews are related to other federal child welfare reviews.

*Response:* We would like to clarify that the reviews complement and support one another. The CCWIS data

quality reviews examine the systems and processes that collect, process, and report the data and manage data quality. The system focused data quality reviews complement other federal child welfare program reviews that evaluate program practice and outcomes. For example, while a CFSR review may examine the effectiveness of family team meetings, a data quality review determines if a CCWIS maintains complete, timely, and accurate data about the family team meetings. Another example is that we encourage agencies to develop an efficient review process by incorporating their existing AFCARS and NYTD data quality activities into their CCWIS data quality plan.

*Comment:* One commenter recommended requiring data conversion and migration (DCM) activities to improve data quality.

*Response:* While we agree with the commenter that DCM activities improve data quality, we are not adding this specific requirement to this rule. A data quality review will identify factors contributing to poor data quality including, if applicable, DCM. However, as noted above, we are providing title IV–E agencies with the flexibility to select the review processes most suitable for their circumstances. We intend to provide technical assistance to title IV–E agencies on this topic, as needed.

*Comment:* A number of commenters asked for clarification on funding available for the data quality reviews, including staff time.

*Response:* We would like to clarify that the data quality review is an approved activity as defined at § 1355.51 and may qualify for CCWIS cost allocation per § 1355.57(c).

*Comment:* Some commenters requested we provide a higher FFP rate to support data quality review activities.

*Response:* We are not making a change to the rule because ACF does not have statutory authority to provide a higher FFP rate.

*Comment:* Some commenters were concerned that there may not be adequate federal resources to support title IV–E agency needs for technical support for the data quality reviews.

*Response:* We would like to clarify that title IV–E agencies submit their approach for data quality reviews with the data quality plan in an annual or operational APD per paragraph (d)(5). ACF will respond to APDs (and the associated data quality plan) within 60 days.

*Comment:* Several commenters were concerned with the burden associated with an annual data quality review. One commenter requested we conduct a

cost/benefit analysis to evaluate the burden of the data quality review on the state agency. Some commenters, while agreeing the rule should include a data quality component, expressed concern that a prescriptive and extensive data quality review was burdensome. One commenter suggested reducing burden by classifying state and tribal data quality standards as optional. A number of commenters expressed concern that conducting data quality reviews as frequently as annually would be burdensome.

*Response:* We are making one change to the data quality reviews as a result of public comments and have revised the rule to require agencies to conduct biennial rather than annual reviews. In general, we believe that the requirements for data quality reviews in this rule are consistent with current title IV–E agency practices that reflect the importance of high quality data. All title IV–E agencies, recognizing that high quality data is essential for the administration of child welfare programs, have integrated data quality review processes into on-going system operations. Agencies also use data quality reviews to determine if systems are producing the expected data, identify weaknesses, and to guide the continuous quality improvement of their systems. We have observed that all title IV–E agencies with operational S/TACWIS projects (34 states) have data quality reviews that will likely meet the rule's data quality requirements. We note that title IV–E agencies without a S/TACWIS must minimally meet the required federal data quality standards for reports such as AFCARS and NYTD. In addition, we understand that agencies with non-S/TACWIS systems do institute processes to monitor non-federal data required by the agency. We have observed that even title IV–E agencies with limited resources have established procedures for extensive monitoring of data quality. Successful strategies of these agencies include using automated data quality reports and audits of sample cases to review all data and then targeting identified problematic data for improvement. We did not prescribe specific review activities, as we expect agencies to largely continue or improve upon their current data quality activities. We therefore determined that the burden to title IV–E agencies will be minimal.

However, because existing data quality review practices vary, we changed the proposed requirement in paragraph (d)(3) for annual data quality reviews to instead require biennial title IV–E agency data quality reviews to provide title IV–E agencies with

flexibility to maintain their current processes for such reviews, to the extent possible. However, we encourage title IV–E agencies that currently conduct annual data quality reviews to continue this practice.

*Comment:* Some commenters are concerned that the data quality reviews and the correction of findings as required by paragraph (d)(4) will divert staff resources away from other program activities. One commenter suggested the costs will increase exponentially as agencies try to achieve increasingly higher data quality goals.

*Response:* We did not make any changes in response to these comments because we believe that complete, timely, and accurate data supports the goals of child safety, wellbeing, and permanency. High quality data informs actions and guides decisions at all levels of the agency. Workers use data to manage cases, monitor services, and assess client progress while supervisors and administrators use it to monitor and direct work, manage resources, evaluate program effectiveness, control costs, and estimate funding needs. Data quality reviews support the collection, management, and dissemination of high quality data. The requirement in paragraph (d)(4) to address review findings with corrective action establishes a repeatable cycle of continuous quality improvement. Each successive review measures the impact of past corrective actions. This enables title IV–E agencies to determine the effectiveness of those actions and make adjustments leading to further improvements and enhance CCWIS's ability to support the efficient, economical, and effective administration of the child welfare program.

Title IV–E agencies with S/TACWIS projects have established data quality review processes and staff assigned to these tasks. We encourage title IV–E agencies to manage data quality staffing needs with automation supporting data quality per paragraph (d)(2).

We disagree that data quality review costs will increase exponentially. We would like to clarify that data quality reviews will require fewer resources in successive years. The rule provides title IV–E agencies with the flexibility to incrementally improve data quality over time. We expect many agencies to continue their practice of prioritizing data quality efforts by focusing first on correcting the most critical data elements and build on their progress so that with each review fewer problems remain.

We would also like to clarify that data quality enhancements are an established

and necessary system maintenance practice. Without regular data quality monitoring, systems decline in reliability and usefulness and may require replacement at costs significantly higher than ongoing maintenance activities.

We have also observed that as systems age they accumulate data that is no longer needed to support improved practices. By aligning data needs to current program practice, as required by this rule, agencies will identify and purge systems of irrelevant screens and fields thereby simplifying the system and increasing worker efficiency.

In paragraph (d)(3)(i), we specify that the data quality reviews determine if the title IV–E agency and, if applicable, child welfare contributing agencies, meet the new requirements of § 1355.52(b), (d)(1), and (2).

In paragraph (d)(3)(ii), we specify that the title IV–E agency's data quality reviews determine whether bi-directional data exchanges meet applicable requirements.

*Comment:* A number of commenters expressed concern that requiring the review of child welfare contributing agency systems and data collection activities was burdensome.

*Response:* We did not make changes based on these comments because these requirements for data quality reviews do not prescribe the procedures title IV–E agencies must follow when reviewing CWCA's. We encourage agencies to consider approaches to review CWCA's and their data efficiently, economically, and effectively. Approaches may include a mix of review techniques, including:

- Randomly sampling CWCA data to review.
- Automatically evaluating CWCA data quality, alerting CWCA's to data quality failures, and establishing timeframes for corrective action.
- Contractually obligating CWCA's to regularly review their data quality and correct errors.
- Establishing a schedule of on-site reviews for a subset of CWCA's during each biennial review.
- Tailoring review procedures for specific CWCA's. Experienced CWCA's with a history of submitting high quality data may be reviewed through an examination of data quality reports. Reviews of new CWCA's with uneven data quality may be more intensive and include interviews with staff, observation of data collection training, and analysis of the CWCA's automated system.

We also note that data quality reviews will vary depending on the flexibility title IV–E agencies grant CWCA's. For

example, if a title IV–E agency requires CWCA's to use CCWIS, no CWCA systems are reviewed. In any case, the reviews must consider the CWCA data collection processes and training that affect data quality.

In paragraph (d)(4), we specify that the title IV–E agency must enhance CCWIS or the electronic bi-directional data exchanges, or both, to correct findings from the data quality reviews described at paragraph (d)(3).

*Comment:* A few commenters asked what the title IV–E agency must do with the results of the data quality reviews and whether title IV–E agencies were required to correct the system, the data or both.

*Response:* We would like to clarify that title IV–E agencies must correct the factors contributing to poor quality data, such as data collection procedures and training, CCWIS errors, or problems with bi-directional data exchanges.

Agencies may propose how they will address findings in their data quality plans. In the case of numerous findings, we encourage title IV–E agencies to prioritize the issues and address critical findings first. We do not require that agencies address all findings within a specified timeframe. For example, an agency may decide to focus on enhancements to automated edit checks as a first step, and then if necessary make improvements to staff training as a second step if data quality does not improve.

ACF expects successive reviews to demonstrate the effectiveness of actions taken per this paragraph to improve data quality. We do not expect that all data meet all standards all the time, but instead that the status reports submitted per paragraph (d)(5)(ii) demonstrate continuous improvement in data quality.

This rule permits, but does not require, agencies to correct previously collected data, thereby minimizing any burden on title IV–E agencies.

*Comment:* Several commenters asked if there were established timeframes for correcting findings.

*Response:* We would like to clarify that the title IV–E agency will propose timeframes for ACF approval as part of the data quality plan or APD. As is the practice with S/TACWIS compliance issues, complex enhancements may require a longer timeframe to correct.

*Comment:* One commenter recommended that the rule provide title IV–E agencies the ability to obtain waivers for failing to meet data quality standards due to extraordinary circumstances.

*Response:* We are not making changes to this paragraph in response to this

comment because the flexibility we provide makes a formal waiver process unnecessary. We will continue the practice we have refined over 20 years of S/TACWIS implementations to encourage title IV–E agencies to report extraordinary circumstances to us so that we can address the issue on a case-by-case basis for resolution. We also note title IV–E agencies may report schedule changes in an APD Update per 45 CFR 95.610(c).

In paragraph (d)(5), we specify that the title IV–E agency must develop, implement, and maintain a CCWIS data quality plan in a manner prescribed by ACF and include it as part of the Annual or Operational APD as required in 45 CFR 95.610.

*Comment:* A few commenters asked how title IV–E agencies will know that their data quality plans are adequate.

*Response:* We would like to clarify that ACF will review the data quality plan provided with the APD and either approve it or continue to work with the title IV–E agency to address concerns so that ACF can approve the plan.

*Comment:* One commenter recommended that we integrate the data quality plan into the title IV–E agency's continuous quality improvement protocols.

*Response:* We are not making a change to require title IV–E agencies integrate their data quality plans into integrated continuous quality improvement plans because requiring this integration would limit agency flexibility to develop and implement both plans to best meet their needs. However, we agree that reliable data provided by data quality efforts is necessary to measure program quality improvements and encourage this integration, at the agency's option.

*Comment:* Some commenters recommended we provide more guidance on the required components of a data quality plan. A few requested we provide a data quality plan template for agencies to complete.

*Response:* We would like to clarify that we will provide additional guidance on data quality plan components after publication of this rule.

*Comment:* One commenter asked how the data quality plan would affect an existing AFCARS program improvement plan.

*Response:* We would like to clarify that the AFCARS rule governs the AFCARS program improvement plan. However, as noted in our previous response, we encourage agencies to incorporate existing data quality activities into the CCWIS data quality plan.

*Comment:* Several commenters asked if states that do not implement a CCWIS are required to develop a data quality plan.

*Response:* We would like to clarify that, except for the rule at § 1355.56(d) and (e), this rule does not apply to non-CCWIS systems.

In paragraph (d)(5)(i), we specify that the data quality plan describes the comprehensive strategy to promote quality data including the steps to meet the requirements at § 1355.52(d)(1) through (3).

In paragraph (d)(5)(ii), we specify that the data quality plan must report the status of compliance with paragraph (d)(1).

We received no comments concerning these paragraphs and made no changes.

In paragraph (e), we specify requirements for mandatory bi-directional data exchanges.

*Comment:* Several commenters requested that ACF provide an enhanced FFP rate (such as the 90 percent rate provided by the Centers for Medicare & Medicaid Services (CMS) for systems supporting title XIX eligibility determinations) for title IV–E agencies and partner agencies to develop and maintain the required bi-directional data exchanges.

*Response:* We are not making a change to this paragraph because ACF does not have statutory authority to provide an enhanced FFP rate. We note that CMS corrected an obsolete reference to an enhanced FFP rate in a rule issued on December 4, 2015 (80 FR 75843). Therefore, we did not make a technical revision to § 95.611(a)(2) in this rule.

*Comment:* A commenter noted that CCWIS planning should be part of enterprise-wide systems planning to achieve the interoperability envisioned in the NPRM.

*Response:* We are not making a change to this paragraph because requiring title IV–E agencies to include CCWIS planning as part of an enterprise-wide system would limit agencies' flexibility to develop systems meeting their needs. However, we agree that programs should coordinate system development efforts for greater interoperability and encourage health and human service programs to work together to develop data exchanges meeting the needs of all partners.

*Comment:* A few commenters asked if there are limits to the number of bi-directional data exchanges. One commenter expressed concern that the mandatory bi-directional data exchanges precluded the development of uni-directional data exchanges.

*Response:* We would like to clarify that there are no limits on the number of bi-directional data exchanges. While paragraph (e) defines eleven mandatory bi-directional data exchanges, title IV–E agencies may propose additional optional data exchanges, including uni-directional data exchanges, per § 1355.54. Optional data exchanges are discussed in greater detail in § 1355.54.

*Comment:* One commenter recommended we require title IV–E agencies to track the source of data provided by data exchanges as this would help improve data quality and resolve instances of different systems reporting conflicting data.

*Response:* We are not making a change to this paragraph because we want to retain state and tribal flexibility to define relevant data for the data exchanges. However, we agree with the commenter that tracking data sources is a best practice for improving data quality and resolving data conflicts.

*Comment:* One commenter asked if we would designate a CCWIS as noncompliant with the data exchange requirements if other priorities prevented the timely creation of a data exchange.

*Response:* We would like to clarify that we will follow the process used under current APD rules. The APD process allows title IV–E agencies to identify the reasons for schedule slippages in the APD and propose revised schedules in an APD Update. We will review the APD and either approve the revised schedule or work with the agency to correct barriers to timely completion.

*Comment:* One commenter asked if current data exchanges between existing systems can be retained if they conform to CCWIS requirements.

*Response:* We would like to clarify that title IV–E agencies may need to enhance exchanges between CCWIS and both CWCA and external title IV–E systems as described in paragraphs (e)(1)(ii) and (iv) of this section. However, the title IV–E agencies may continue to use existing data exchange methods established between a transitioning title IV–E system and its other current exchange partners. As is the case with all data exchanges, title IV–E agencies may need to change what data is exchanged to meet changing needs.

*Comment:* One commenter recommended that it would be helpful to states if we provided guidance on data exchange mechanisms, include preferred security standards and transmission protocols.

*Response:* We are not making a change to this paragraph to specify data

exchange mechanisms because we want to preserve title IV–E agency flexibility to implement approaches best suited to their circumstances. Requiring certain technologies may also preclude agencies from using newer, better, and unanticipated technologies. However, we intend to provide technical assistance on all data exchanges.

*Comment:* One commenter requested that, to support the data exchanges and interoperability, ACF add models of CCWIS data exchanges to the National Information Exchange Model (NIEM).

*Response:* We agree with the commenter that NIEM promotes data exchanges and interoperability. We would like to clarify that ACF is actively working to expand NIEM resources for human service agencies with our involvement in the NIEM Human Service Domain.

In paragraph (e)(1), we proposed that CCWIS must support one bi-directional data exchange to exchange relevant data with each of the systems in paragraphs (e)(1)(i) through (iv), if CCWIS data is generated by a system outside of CCWIS.

*Comment:* A number of commenters requested we change the requirement to permit multiple data exchanges. Some commenters noted that technological advances may eliminate the value of a single data exchange. Other commenters noted it would be difficult to accommodate a wide range of agencies with one bi-directional data exchange.

*Response:* We made a change to the rule to address this comment and specify that the CCWIS must support efficient, economical, and effective bi-directional data exchanges rather than one bi-directional data exchange. This change offers title IV–E agencies greater flexibility to build data exchanges to accommodate different circumstances and systems, provided the agency's approach is efficient, economical, and effective.

In reference to data exchanges, “efficient, economical, and effective” means that title IV–E agencies should consider meeting data exchange requirements with (preferably) one or a limited number of data exchanges that address common business needs. Such an approach results in well-defined data exchanges. For example, if a title IV–E agency exchanges data with twenty CWCAAs conducting child abuse and neglect investigations and thirty CWCAAs providing placement and case management services, the agency may build two data exchanges—one supporting investigations and the other supporting placement and case management services. These two exchanges would be less expensive for

the title IV–E agency to maintain and quicker to update than separate data exchanges with all fifty CWCAs. The two exchanges also provide the specific data to support different business needs whereas combining the two into one data exchange means each of the CWCA groups would have to build larger and more costly data exchanges to process data irrelevant to their business needs.

This rule also supports agency requirements to exchange different data with the same CWCA at different times to support business needs. For example, the title IV–E agency and CWCAs may need to first establish new cases, then request client services, follow-up with data corrections, and finally, request and provide AFCARS data. We consider these four separate communications to be part of a single data exchange supporting a common business need, provided the two agencies exchange all data using the same communication protocols.

*Comment:* One commenter asked if data obtained from a data warehouse could satisfy one or more of the data exchange requirements.

*Response:* We would like to clarify that data obtained from a data warehouse may satisfy a data exchange requirement provided that the data warehouse provides the relevant data to CCWIS and the program defined in the requirement.

*Comment:* Some commenters requested we explain the rationale for changing the S/TACWIS term “interface” to “exchange.” They noted that some agencies have used “look-up” capabilities via an interface to view data in other systems rather than exchange data and asked if this capability would meet data exchange requirements.

*Response:* We would like to clarify that we replaced “interface” with “data exchange” for three reasons:

1. To clarify that we do not require CCWIS to have real-time direct access to other systems to collect data, although that is permitted. CCWIS (and the partner system in a data exchange) may create and transmit data files. The processing of, and response to a data file is not required to be done in real time.

2. To be consistent with the increased use of the phrase “data exchange” in recent federal statutes applicable to programs such as foster care and adoption assistance under title IV–E, Temporary Assistance to Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP) and programs operated by the Department of Labor.

3. To convey that CWCAs must provide copies of relevant data to CCWIS. CCWIS must have data copies

in case there is a need to share the data with other systems as well as to preserve historical records if data sharing between CCWIS and the other agency ends. A look-up capability is not sufficient because the data would be lost if the provider went out of business. Please see our response below clarifying the phrase “to the extent practicable” for more information on whether a look-up capability meets the data exchange requirements described in paragraph (e)(2).

*Comment:* Some commenters proposed we conduct a cost/benefit analysis on the burden to states and data exchange partners for paragraphs (e)(1)(i) through (iv). Commenters cited the need to make significant changes to data exchange partner systems without significant financial assistance from ACF and the title IV–E agency.

*Response:* We are not conducting a cost/benefit analysis because the requirements in paragraphs (e)(1)(i) through (iv) do not create additional burden on title IV–E agencies. First, exchange partners are not required to change their existing systems to accommodate the data exchange. As we noted in the proposal, it was a common misunderstanding that title IV–E agencies were required to modify S/TACWIS to accommodate data provided to or received from other systems. We agree it would be inefficient to modify, and difficult to maintain CCWIS (and other systems) to accommodate the data definitions, formats, values, and other specifications of every data exchange. Instead, we strongly encourage partners to map, wherever possible, their existing data to the data exchange specifications rather than modifying their systems to match the specifications.

Second, paragraphs (e)(1)(i) and (iii) do not impose additional burden because they are not new. In paragraph (e)(1)(i), we specify that CCWIS exchange data with systems generating financial payments and claims for title IV–B and IV–E, per paragraph (b)(1)(ii). This requirement incorporates the S/TACWIS rule at § 1355.53(b)(7) and policy in Action Transmittal ACF–OISM–001. In paragraph (e)(1)(iii), we specify that CCWIS must have a bi-directional data exchange with each system used to calculate one or more components of title IV–E eligibility determinations per paragraph (b)(1)(ii), if applicable. This requirement is consistent with the S/TACWIS rule at § 1355.53(b)(5) and policy in Action Transmittal ACF–OSS–005.

Finally, we note that data exchanges with CWCAs (paragraph (e)(1)(ii)) and with external systems used by agency staff to collect CCWIS data (paragraph

(e)(1)(iv)) are only required “if applicable.” Similar to the requirements under the S/TACWIS rule, if the title IV–E agency continues to require all CWCAs to use CCWIS and does not permit external systems to supplement CCWIS, data exchanges are not needed. CCWIS provides the option to use data exchanges to provide title IV–E agencies with the flexibility to determine the most efficient, economical, and effective approaches for collecting CCWIS data.

*Comment:* One commenter asked if systems that currently exchange data with S/TACWIS must be modernized to accommodate enhancements made to transition a S/TACWIS to CCWIS.

*Response:* We would like to clarify that we are not requiring other agencies to modernize their systems.

*Comment:* One commenter asked if the purpose of the bi-directional data exchanges was to send data to and receive data from multiple systems so that CCWIS can manage reporting.

*Response:* We would like to clarify that sending and receiving data from multiple systems so that CCWIS can manage reporting is one of the purposes of the bi-directional data exchanges.

*Comment:* Some commenters requested that we define the “relevant data” for each data exchange.

*Response:* We would like to clarify that by “relevant data,” we mean data collected in an information system that, in compliance with applicable confidentiality requirements, may be shared with a program that considers the data useful for meeting goals or objectives. Relevant data may be different for different data exchanges or for different title IV–E agencies. We did not require specific data in order to provide title IV–E agencies with flexibility to determine, in consultation with their data exchange partners, the data each partner has that is useful and can be shared.

The NPRM provided examples of relevant data for several of the data exchanges on pages 48213 and 48214. Action Transmittal ACF–OSS–05 provides additional examples. We plan to issue additional guidance on the bi-directional data exchanges.

*Comment:* A number of commenters cited the cost of making changes as an impediment to meeting this requirement.

*Response:* We would like to clarify that CCWIS is an option and we encourage title IV–E agencies to evaluate if CCWIS is appropriate for their circumstances. We encourage title IV–E agencies to implement a CCWIS only if it is a cost-effective approach to meeting agency business needs.

*Comment:* One commenter recommended incentives to make it compelling for exchange partners, such as the CWCA and non-child welfare agencies to participate in data exchanges.

*Response:* We would like to clarify that we do not have statutory authority to provide incentives beyond the CCWIS cost allocation described in § 1355.57. However, we have observed that title IV–E agencies will often fund CWCA’s costs through contracts or agreements. Additionally, as is the case under S/TACWIS, states or tribes may require providers to use the CCWIS.

*Comment:* One commenter asked how the mandatory bi-directional data exchanges affect developmental and operational funding.

*Response:* We would like to clarify that the bi-directional data exchange requirements do not affect the CCWIS funding requirements at § 1355.57. We note that the funding for CCWIS data exchanges is unchanged from the funding for S/TACWIS interfaces.

*Comment:* A commenter recommended ACF encourage title IV–E agencies use master-person indexes to assist with matching individuals across programs and systems linked by bi-directional data exchanges to support improved data quality and client outcomes.

*Response:* We are not making a change to address this comment. Although we agree master-person indexes may support improved data quality and client outcomes, we are not requiring master-person indexes so that title IV–E agencies may develop solutions appropriate for their child welfare business practices and information technology environment.

In paragraph (e)(1)(i), we specify that CCWIS exchange data with systems generating financial payments and claims data for titles IV–B and IV–E, per § 1355.52(b)(1)(ii), if applicable.

We received no comments on this paragraph and made no changes.

In paragraph (e)(1)(ii), we specify that the CCWIS must have a bi-directional data exchange with systems operated by child welfare contributing agencies that are collecting or using data described in § 1355.52(b), if applicable.

*Comment:* One commenter asked if this requirement and any related funding applies equally to private vs. public CWCAs.

*Response:* We would like to clarify that the bi-directional data exchange requirement applies equally to private and public CWCAs. However, funding under this rule applies to the title IV–E agency for the CCWIS and its costs. Costs related to the CWCA’s side of an

exchange may be eligible as an administrative cost to the IV–E agency.

*Comment:* One commenter recommended we permit bi-directional data feeds between existing SACWIS and CWCA systems.

*Response:* We note that as of the effective date of this rule the S/TACWIS rule is no longer in effect. Bi-directional data exchanges between CCWIS and CWCAs are required, if applicable. Bi-directional data exchanges between non-CCWIS and CWCAs are allowed.

*Comment:* A number of commenters noted it would be burdensome for all CWCAs to have an electronic data exchange with CCWIS and asked for additional flexibility, such as a waiver of this requirement.

*Response:* A CWCA must have a bi-directional data exchange with CCWIS only if, as noted in the NPRM, a CWCA is using a system or module other than CCWIS to collect or generate CCWIS data. However, a data exchange is not required if the agency uses CCWIS to collect or generate CCWIS data. Under S/TACWIS rules, child welfare contributing agencies were required to use S/TACWIS. This provision is different from S/TACWIS in that it permits CWCAs to use CCWIS as an option, but provides the data exchange as an alternative if a title IV–E agency permits CWCAs to use a system other than CCWIS.

*Comment:* One commenter suggested that the rule’s prohibition on duplicate application development and software maintenance prevents county administered states relying on CWCAs using other systems from complying with this rule.

*Response:* We would like to clarify that while the rule does not prohibit duplicate application development and software maintenance, it does not allow CCWIS funding for it. Components of the CCWIS that are duplicated in other CWCA or title IV–E agency systems may qualify for non-CCWIS cost allocation.

*Comment:* A few commenters were concerned that it may be difficult for some CWCAs to develop data exchanges with the title IV–E agency if they are not eligible for funding to enhance their systems and participate in the data exchange.

*Response:* We did not make any changes to this paragraph in response to the comments. We would like to clarify that we have observed that title IV–E agencies address CWCA administrative costs, including system costs, through their contracts with CWCAs. Additionally, the title IV–E agency may require a CWCA that is unable to exchange data to use the CCWIS.

*Comment:* One commenter asked if CWCA databases must be viewable by the title IV–E agency in real-time.

*Response:* We would like to clarify that via a bi-directional data exchange CWCAs must provide a copy of the CCWIS data for the title IV–E agency to maintain in the CCWIS. This rule does not require that CCWIS have the capability to view CWCA databases in real-time.

*Comment:* One commenter asked how ACF would govern the quality of CWCA data.

*Response:* We would like to clarify that the title IV–E agency is responsible for governing data quality in compliance with the requirements described in paragraph (d).

*Comment:* A few commenters requested we clarify if the “to the extent practicable” language applies to this paragraph and paragraph (e)(1)(iv), which are the external systems used by title IV–E agency staff to collect CCWIS data.

*Response:* We would like to clarify that the “to the extent practicable” language does not apply to these two paragraphs. Both requirements are “if applicable.” This means, for paragraph (e)(1)(ii), that CCWIS must have a data exchange with a CWCA if that CWCA uses a system other than CCWIS for child abuse and neglect investigations, placements, or child welfare case management. It is not applicable if a CWCA is using CCWIS. For paragraph (e)(1)(iv), “if applicable” means that CCWIS must have a data exchange with any external system used by agency staff to collect CCWIS data, however, it is not applicable if there are no such external systems. We emphasize that it is a state or tribal decision to build external systems or permit CWCAs to use systems other than CCWIS.

*Comment:* One commenter proposed that ACF provide a clearinghouse of information on CCWIS interoperability for CWCAs.

*Response:* We would like to clarify that we will continue to provide technical assistance to promote interoperability, although we have not determined if we will use clearinghouses as a means of distributing technical assistance.

In paragraph (e)(1)(iii), we specify that the CCWIS must have a bi-directional exchange with each system used to calculate one or more components of title IV–E eligibility determinations per § 1355.52(b)(1)(ii), if applicable.

We received no comments on this paragraph and made no changes.

In paragraph (e)(1)(iv), we specify that CCWIS must have a bi-directional data exchange with each system external to

CCWIS used by title IV–E agency staff to collect CCWIS data, if applicable.

*Comment:* A commenter asked for guidance on identifying these other systems and determining if a data exchange with CWCAs meets this requirement.

*Response:* We would like to clarify that title IV–E agencies identify, per the requirement, systems other than CCWIS used by title IV–E agency staff to collect CCWIS data. Examples include county child welfare systems and specialized applications such as databases used to track case management tasks, conduct assessments, or perform home studies. As with all data exchanges described in paragraph (e), the data exchange must exchange relevant data to meet the requirement.

In paragraph (e)(2), we specify that, to the extent practicable, the IV–E agency must support one bi-directional data exchange to exchange relevant data with specified state or tribal systems. These are exchanges with the systems used by titles IV–D and IV–A programs, title XIX mechanized claims processing and information retrieval systems (including the eligibility determination components of such systems), and systems used by courts, education, and the child abuse and neglect programs.

*Comment:* Some commenters requested we encourage other federal agencies to allow other entities, such as educational agencies and courts, to use FFP to build their portion of the bi-directional data exchanges. Commenters noted the since data exchanges provide benefits to all partners those partners should receive FFP. One commenter specifically mentioned that it would be challenging for the Medicaid program, courts, and education programs to obtain funding for the data exchanges.

*Response:* We would like to clarify that we will continue to encourage other federal agencies to provide FFP, however, we only have statutory authority to provide FFP for systems supporting the administration of the title IV–B, title IV–E and CAPTA programs. We agree the data exchanges provide benefits to all partners and that increasing awareness of these benefits may encourage other partners to participate. For example, because child welfare program eligibility information is necessary for proper determination of some types of Medicaid eligibility, and can facilitate rapid enrollment into Medicaid, we anticipate working with CMS to provide technical assistance on data exchanges.

*Comment:* A number of commenters asked for clarification on the meaning of “to the extent practicable.” Commenters wanted to know the reasons ACF would

accept for a data exchange being impracticable and if ACF requires a cost/benefit analysis to demonstrate a data exchange is impracticable. Several commenters wanted an estimate of conducting such a cost/benefit analysis. One commenter wanted to know if we used the terms “practicable” and “practical” interchangeably in the NPRM.

*Response:* We would like to clarify that the terminology “to the extent practicable” was specified in the original legislation authorizing these types of systems and is not new.

We are continuing the requirement that these data exchanges be implemented “to the extent practicable” from the S/TACWIS rules that have been in effect since 1993. Consistent with the S/TACWIS rule, this rule allows title IV–E agencies to present a business case in an APD describing the circumstances rendering a data exchange impracticable. These circumstances are not limited to the examples given in the NPRM, which are: (1) The other system is not capable of conducting an exchange; and (2) the exchange is not feasible due to cost constraints. Title IV–E agencies may cite any circumstances they deem relevant for ACF’s consideration. The APD rule includes burden estimates for providing a business case for any purpose, including explaining why a data exchange is impracticable.

ACF does not require a cost/benefit analysis to demonstrate a data exchange is impracticable.

We also would like to clarify that title IV–E agencies may explain that a partial data exchange is “to the extent practicable.” For example, if some courts participated in the data exchange while others did not, ACF would consider a business case explaining that the partial exchange met the “to the extent practicable” requirement. If a state or tribal agency’s rules forbid transferring data to CCWIS but permitted CCWIS users to view the data, ACF would consider a business case that a data view was the only practicable solution.

Finally, we would like to clarify that we reviewed the NPRM and made changes to eliminate inconsistencies in the use of the terms “practicable” and “practical.”

*Comment:* One commenter asked if the data exchange must be bi-directional if the other program, such as the MMIS, does not need any CCWIS data.

*Response:* We would like to clarify that this is another example where the bi-directional data exchange may not be practicable. The title IV–E agency would

describe such situations in the applicable APD.

However, we believe all bi-directional data exchanges benefit both partners and intend to provide guidance on the mutual benefits.

*Comment:* One commenter recommended we execute memoranda of understanding or interagency agreements with other entities, including courts, the Department of Education and the Office of Child Support Enforcement establishing the data exchange expectations for state or tribal counterparts.

*Response:* We would like to clarify that we have issued joint guidance with other federal partners. One example is our joint issuance to states with the Office of Child Support Enforcement, Information Memorandum ACYF–CB–IM–12–06, providing guidelines on data sharing. We intend to continue this practice of working with federal entities to promote collaboration between state, tribal, and local agencies. If title IV–E agencies have any challenges, we encourage states and tribes to reach out to ACF.

In paragraph (e)(2)(i), we specify that CCWIS must have one bi-directional data exchange with the child abuse and neglect system(s), to the extent practicable.

In paragraph (e)(2)(ii), we specify that CCWIS must have one bi-directional data exchange with the system(s) operating under title IV–A of the Act, to the extent practicable.

We received no comments on these paragraphs and made no changes.

In paragraph (e)(2)(iii), we specify that CCWIS must have bi-directional data exchanges with Medicaid systems operated under title XIX of the Act, to the extent practicable.

*Comment:* One commenter asked if we consulted with CMS on these requirements. The commenter noted that guidance from CMS to state agencies encouraging data exchanges with title IV–E agencies would be helpful.

*Response:* We would like to clarify that we worked collaboratively with CMS to develop this CCWIS final rule, as well as on the final rule for Mechanized Claims Processing and Information Retrieval Systems published by CMS in the **Federal Register** on December 4, 2015 (80 FR 75817). According to CMS, the Mechanized Claims Processing and Information Retrieval Systems final rule at 42 CFR 433.112(b)(16) requires that any state Medicaid system funded with an enhanced federal match must allow for interoperability with various entities, including human service



agencies. With our history of working with CMS on regulations and other tasks such as zONE (an initiative to facilitate the sharing of state project documents), providing technical assistance to states on the OMB Circular A–87 cost allocation waiver, encouraging enterprise development projects, and development of statewide health passports for children in foster care, we will work with CMS to develop joint guidance, as needed.

In paragraph (e)(2)(iii)(A), we specify that CCWIS must have one bi-directional data exchange with systems used to determine Medicaid eligibility, to the extent practicable.

*Comment:* One commenter recommended we encourage states to avail themselves of the 90 percent FFP match under what is commonly called the “A–87 exception” to pay for the building of this bi-directional data exchange.

*Response:* We would like to clarify that the OMB Circular A–87 cost allocation waiver was extended through December 2018 and allows states to access the 90 percent Medicaid FFP match to the extent appropriate for developing shared eligibility services and making systems integration investments. We are available to provide technical assistance to states as needed.

In paragraph (e)(2)(iii)(B), we specify that CCWIS must have a bi-directional data exchange with the MMIS as defined at 42 CFR 433.111(b), to the extent practicable.

*Comment:* Several commenters requested clarification on the data expected from the data exchange with the MMIS. Several commenters noted that MMIS typically does not contain a client’s complete Medicaid history. One commenter asked if CCWIS is required to maintain a foster child’s entire medical record.

*Response:* We would like to clarify that this paragraph requires title IV–E agencies to maintain in CCWIS the available medical record information received from the MMIS (which would include the Medicaid claims history or, for those enrolled in managed care, provider encounter data), however we do not require CCWIS to maintain a foster child’s entire medical history. We do encourage title IV–E agencies to collect health information as needed from other sources, including an available Health Information Exchange. We note that title IV–E agencies may propose optional data exchanges to other health systems that may qualify for CCWIS funding per § 1355.54.

*Comment:* Some commenters requested that we assure title IV–E agencies that, where applicable, Health

Insurance Portability and Accountability Act (HIPAA) rules do not preclude state agencies from sharing data. One commenter was concerned that the costs to bring CCWIS into compliance with HIPAA rules might prevent their state from implementing this required data exchange and hence complying with CCWIS requirements.

*Response:* We would like to clarify that in § 1355.52(d)(1)(iii), we require that the title IV–E agency exchange and maintain CCWIS data in accordance with the confidentiality requirements of applicable federal and state or tribal laws. This is not an entirely new requirement as data maintained under a SACWIS are subject to federal, state, and tribal confidentiality requirements, and current S/TACWIS are required to interface with systems used by the Medicaid program to determine eligibility. The requirement that the title IV–E agency support one bi-directional data exchange with the eligibility and enrollment system used to determine Medicaid eligibility, and one bi-directional data exchange with the MMIS used to process Medicaid claims and perform other management functions (as those systems are described in 42 CFR 433.111(b)(2)(ii)), to the extent practicable, does not mean that any and all information is exchanged—only information that each agency is permitted to exchange in accordance with applicable confidentiality rules. Finally, we note that a number of states have already implemented such exchanges to the benefit of the children in foster care.

ACF will consider, as noted above, cost constraints as a reason that a data exchange in paragraph (e)(2) is not practicable.

*Comment:* One commenter noted that much of the health data may be new and unfamiliar to workers and recommended we provide guidance on the data’s most effective uses.

*Response:* We would like to clarify that the effective use of the data is determined by each agency, but we intend to provide technical assistance on all the required data exchanges.

*Comment:* One commenter recommended that the rule include and encourage Affordable Care Act related provisions that impact foster care.

*Response:* We are not making a change in response to this comment because this paragraph already supports the Affordable Care Act related provisions that affect foster care. We also note that ACF issued guidance on the provisions of the Affordable Care Act that affect foster care in Program Instruction ACYF–CB–PI–10–10.

*Comment:* One commenter noted that states should not be held accountable for the quality of MMIS claims data since the agencies have no control over its collection.

*Response:* We would like to clarify that, as noted in our response to paragraph (d)(1) that title IV–E agencies may take into account data sources when establishing data quality standards.

*Comment:* One commenter recommended we establish a Technical Advisory Group of experienced states to assist other agencies in implementing data exchanges as required by this paragraph.

*Response:* We would like to clarify that we currently support a Technical Working Group, monthly webinars, and national conference calls on various topics and will continue this technical assistance. We have supported peer-to-peer networks to promote sharing of best practices and intend to continue promoting state-to-state networking. We also intend to work with the Capacity Building Center for Tribes to identify tribal concerns.

In paragraph (e)(2)(iv), we specify that CCWIS must have one bi-directional data exchange with systems operated under title IV–D of the Act, to the extent practicable.

In paragraph (e)(2)(v), we specify that CCWIS must have one bi-directional data exchange with systems operated by the court(s) of competent jurisdiction of the title IV–E foster care, adoption, and guardianship programs, to the extent practicable.

We received no comments on these paragraphs and made no changes.

In paragraph (e)(2)(vi), we specify that CCWIS must have one bi-directional data exchange with the systems operated by the state or tribal education agency, or school districts, or both, to the extent practicable.

*Comment:* One commenter asked if we consulted with the Department of Education on this requirement. The commenter noted that guidance from the Department of Education to state agencies encouraging data exchanges with title IV–E agencies would be helpful.

*Response:* We would like to clarify that we consulted with the Department of Education and have developed technical assistance materials in collaboration with the Department of Education. For example, we jointly issued a letter to Chief State School Officers and Child Welfare Directors on Implementing the Fostering Connections Act, which is available here: <https://www.acf.hhs.gov/programs/cb/resource/fostering>

*connections-letter*. We also provide materials related to data sharing with education here: <http://www.nrcpfc.org/is/education-and-child-welfare.html#data>. We intend to continue developing technical assistance materials with the Department of Education.

In paragraph (f), we specify that title IV–E agencies use a single data exchange standard for CCWIS data exchanges described in § 1355.52(f)(1) and (2) upon implementing a CCWIS.

*Comment:* Some commenters noted that the variety of systems, partners, and technological platforms makes it difficult to have a single data exchange standard applicable in all cases. One noted that requiring a single data exchange standard for CWCAs, internal data exchanges within CCWIS, and all the electronic systems external to CCWIS used by title IV–E staff to collect data limited title IV–E agency flexibility, imposed undue burdens on agencies, and impeded agencies from developing economical and workable child welfare systems.

*Response:* We made a change in response to this comment by removing proposed paragraph (f)(2), in which we proposed to require that the data exchange standard must apply to internal data exchanges between CCWIS automated functions where at least one of the automated functions meets the requirements of § 1355.53(a). We agree that a data exchange standard applicable to the data exchanges described in the rest of paragraph (f) may not be appropriate for CCWIS modules.

However, we disagree that the requirement to use a single data exchange standard for CCWIS electronic bi-directional data exchanges limits agency flexibility and imposes undue burdens on agencies. We note that the S/TACWIS rule required CWCAs to use S/TACWIS and did not allow external systems. Although the CCWIS rule permits CWCAs to use their systems and exchange data with CCWIS, title IV–E agencies may still require CWCAs to use CCWIS. Likewise, CCWIS rules permit workers to use external systems that exchange data with CCWIS, but the agency may require workers to use CCWIS. If the title IV–E agency requires these entities to use CCWIS, then data exchanges (and the supporting data exchange standard) are not needed.

We also disagree that a data exchange standard prevents the development of workable, economical child welfare systems. We agree that it may be challenging to implement a single data exchange standard. However, once implemented, a single standard is easier to maintain than multiple standards,

facilitates a common understanding of the data among all partners, simplifies data exchanges, and supports consistent and improved service delivery to children and families. We also note that the rule does not require system modifications to support the standard. Instead, we encourage developers to reduce costs by mapping their system's data to the agreed-upon standard so that data is transformed when using the data exchange.

We intend to provide additional guidance on data exchange standards.

*Comment:* One commenter noted that other state agencies may be unwilling to conform to the data exchange standard.

*Response:* We would like to clarify that the data exchange standard requirement only applies to the data exchanges described in paragraphs (f)(1) and (2), which are respectively CWCA systems described in paragraph (e)(1)(ii) and external systems described in paragraph (e)(1)(iv). Although we encourage the use of a standard in data exchanges with other agencies, this rule does not require it.

*Comment:* Several commenters asked if the data exchange standard applies to data exchanges implemented before the rule's effective date, such as data exchanges already in place due to state statutory requirements.

*Response:* Yes, upon implementation of a CCWIS, the title IV–E agency must use a single data exchange standard with CWCAs and external systems as described in this paragraph, including exchanges that were implemented before the rule's effective date.

*Comment:* One commenter suggested that software module reuse, as encouraged by the CCWIS design requirements at § 1355.54, may be hampered by the flexibility this paragraph provides title IV–E agencies to select the data exchange standard applicable to their CCWIS project. The commenter noted that modules designed to one data exchange standard's specifications may not be reusable by a project with a different data exchange standard. This problem may be resolved by establishing a national data exchange standard for all title IV–E agencies.

*Response:* We are not making a change in response to this comment. We agree that a national data exchange standard would facilitate software reuse by different title IV–E agencies. However, we have observed that a number of title IV–E agencies must follow standards established by the state or tribe. Specifying a national data exchange standard for CCWIS may prevent agencies with a different standard from implementing a CCWIS.

At the same time, ACF intends to provide guidance and technical assistance on data standards that may help promote reuse.

*Comment:* Several comments asked for clarity on the definition of “one data exchange standard.” One commenter asked if the data exchange standard must specify a single communication protocol or multiple protocols. Another commenter asked us to confirm that this definition did not include the technology to transfer the data.

*Response:* We are not making a change in response to this comment because, although paragraph (f) specifies that the standard describe the data, definitions and formats, we are providing flexibility for title IV–E agencies to define the “other specifications” of their data exchange standard.

We would like to clarify that data exchange standards that permit multiple communication protocols are acceptable. We note that some standards, such as the NIEM, permit the use of any electronic communication protocol for data exchanges. We do not recommend that the standard specify the data transfer technology so that the standard is usable in different technical environments.

*Comment:* One commenter asked if the rule would provide further details of the phrase “support interoperability through standard exchange protocols.”

*Response:* We would like to clarify that we will provide further guidance in subsequent policy issuances.

*Comment:* One commenter asked whether it is the state or tribe that selects the data exchange standard.

*Response:* We would like to clarify that it is the state or tribe that is implementing the CCWIS that selects the data exchange standard for its CCWIS project.

*Comment:* One commenter recommended we encourage the use of existing data exchange standards such as those mandated by the Office of the National Coordinator for Health Information Technology because these standards can provide immediate interoperability.

*Response:* While we agree that there are advantages to existing standards, we would like to clarify that our rule preserves flexibility for title IV–E agencies to select or develop a data exchange standard most suitable for their circumstances.

*Comment:* One commenter asked if the title IV–E agency's data exchange standard could change over time.

*Response:* We would like to clarify that the data exchange standard can change over time. For example,

standards often add nuanced and precise conditions to accommodate new and varied circumstances or expand to standardize new areas to address changing policies or practices.

The title IV–E agency may change standards consistent with APD rules at 45 CFR 95.610(c)(2). For example, the title IV–E agency may select one data exchange standard but state or tribal authorities may later impose a different standard.

In paragraph (f)(1), we specify that a single data exchange standard be used for electronic bi-directional data exchanges between CCWIS and each child welfare contributing agency.

*Comment:* One commenter noted that CWCAs may have established data exchange standards that are different from the title IV–E agency selected data exchange standard.

*Response:* We are not making a change in response to this comment. We encourage title IV–E agencies to promote uniform standards in contracts and agreements with CWCAs. We also remind title IV–E agencies that they may require CWCAs to use CCWIS, which makes a bi-directional data exchange and the use of a data exchange standard in this situation unnecessary.

In paragraph (f)(2), we specify that the data exchange standard must apply to data exchanges with external systems described under paragraph (e)(1)(iv). We received no comments on paragraph (f)(2).

In paragraph (g), we specify requirements for automated support for title IV–E eligibility determinations.

*Comment:* One commenter recommended we mandate that the title IV–E agency only conduct the title IV–E eligibility process within CCWIS and that CCWIS be the system of record for eligibility determinations.

*Response:* We are not making a change in response to this comment. This requirement has been in place for the past 20 years and has provided title IV–E agencies with the flexibility to design title IV–E eligibility determination processes that fit their business model. This requirement also allows agencies to take advantage of shared eligibility services developed by other health and human service programs.

We would also like to clarify that the data requirements in paragraph (b)(1)(ii) require CCWIS to be the system of record for the calculated outcome of the title IV–E eligibility determination process.

In paragraph (g)(1), we specify that a state title IV–E agency must use the same automated function or the same

group of automated functions for all title IV–E eligibility determinations.

*Comment:* A commenter recommended we provide an exemption to paragraph (g)(1) to permit states to align CCWIS design with their practice models, existing systems, and geography. Other commenters thought that this requirement was inconsistent with the ACF's encouragement to use independent and reusable modules.

*Response:* We are not making a change in response to these comments. We are not providing an exemption because over the past twenty years, states have been able to automate varied title IV–E eligibility determination processes with the flexibility provided by this requirement.

We would like to clarify that the requirement that the same automated function or group of automated functions process all title IV–E eligibility determinations permits agencies to build independent modules responsible for defined steps of the title IV–E eligibility determination process. Agencies can reuse these well-defined modules in other similar processes.

In paragraph (g)(2), we specify that tribal title IV–E agencies, to the extent practicable, use the same automated function or the same group of automated functions for all title IV–E eligibility determinations.

We received no comments on this paragraph and made no changes.

In paragraph (h), we specify that the title IV–E agency must provide a copy of agency-owned software that is designed, developed, or installed with FFP and associated documentation to the designated federal repository upon ACF's request.

*Comment:* Some commenters requested we clarify that this requirement only applies to new software developed once an agency implements a CCWIS or transitions another system to CCWIS.

*Response:* We would like to clarify that we may request software from legacy systems developed with FFP per 45 CFR 95.617(b). However, we intend to place modules that are candidates for reuse by title IV–E agencies in the federal repository, rather than entire legacy S/TACWIS or non-S/TACWIS systems.

*Comment:* One commenter asked if counties and consortiums serving children eligible for title IV–E would be able to access the federal repository.

*Response:* We would like to clarify that with federal approval, title IV–E agencies may provide software and associated documentation from the federal repository to counties and

consortiums serving children receiving title IV–E.

*Comment:* Some commenters asked if title IV–E agencies would be required to submit commercial off-the-shelf (COTS) products, third party utilities, and automated functions that support multiple operations within an agency.

*Response:* We would like to clarify that since ACF is not granted a license to COTS products or third party utilities that are not owned by the title IV–E agency per 45 CFR 95.617, these products are excluded from the federal repository. However, ACF is granted a license to automated functions designed, developed, or installed with any FFP, so we may place the modules that are candidates for reuse by title IV–E agencies in the federal repository.

*Comment:* One commenter recommended we permit states to seek exceptions to this requirement due to the cost effectiveness of providing the software.

*Response:* We are not making a change to this requirement in response to the comment because our authority for requesting software is provided by the APD rule at 45 CFR 95.617. We also note that the authority to request state or tribal owned software is not new and the cost savings available to IV–E agencies for the re-use of software will outweigh the cost of sharing a copy of the software.

In paragraph (i)(1), we specify that before claiming funding in accordance with a CCWIS cost allocation, a title IV–E agency must submit an APD or, if below the APD submission thresholds defined at 45 CFR 95.611, a Notice of Intent.

In paragraph (i)(1)(i), we specify that the title IV–E agency include in the APD or Notice of Intent a project plan describing how the CCWIS will meet the requirements in § 1355.52(a) through (h) and, if applicable, CCWIS options as described in § 1355.54.

*Comment:* Some commenters noted that the APD process discouraged rapid incremental CCWIS enhancements. They recommended we specifically encourage agile and iterative practices as outlined in the U.S. Digital Services Playbook.

*Response:* We disagree that the APD process discourages rapid incremental enhancements and note that we have worked with states that have used an agile development process. Furthermore, changes to the APD process and rule are outside the scope of this rule. We support the principles outlined in the U.S. Digital Services Playbook to help agencies build effective digital systems.

*Comment:* Some commenters were concerned that the Notice of Intent required for projects under the \$5 million threshold was excessively burdensome. They noted that there did not appear to be a substantive distinction between the submission requirements for these below-threshold projects and projects in excess of \$5 million. The commenters recommended we reduce the burden to under threshold projects and recalculate the impact analysis for title IV–E agencies submitting a Notice of Intent.

*Response:* We are making a change to these requirements in response to these comments to reduce burden on title IV–E agencies. We acknowledge that, as required by paragraph (i)(1)(i), developing “A project plan describing how the CCWIS will meet the requirements in paragraphs (a) through (h) of this section and, if applicable, § 1355.54” could be interpreted as requiring extensive planning. Therefore, we revised paragraph (i)(1)(i) to require “A description of how the CCWIS will meet the requirements in paragraphs (a) through (h) of this section and, if applicable § 1355.54;”. This revision permits an agency to provide a narrative outlining the agency’s approach instead of a detailed project plan including tasks, schedules, and resources.

We intend to provide a Notice of Intent template that title IV–E agencies may complete to meet the requirements of paragraph (i)(1). Use of this template will not be required, however, it will simplify the completion of the Notice of Intent, thereby significantly reducing burden.

We are not making changes to the burden estimate as requested. We considered the reduced burden (from the revised requirement and Notice of Intent template) when we reviewed our impact analysis. We believe that the impact analysis accurately estimates the agency’s burden for completing a Notice of Intent.

Finally, we would also like to clarify that the submission requirements for projects under the \$5 million threshold are substantially less than the requirements for projects over \$5 million. While all projects must meet the submission requirements of paragraph (i) and submit Operational APDs, projects over \$5 million must also meet all the requirements of 45 CFR part 95, subpart F, including the requirements for Planning, Implementation, and As-Needed APDs as well as APD Updates.

In paragraph (i)(1)(ii), we specify that the APD or Notice of Intent include a list of all automated functions that will be included in the CCWIS.

We received no comments on these paragraphs and made no changes.

In paragraph (i)(1)(iii), we specify that the APD or Notice of Intent provide a notation whether each automated function listed in paragraph (i)(1)(ii) meets, or when implemented will meet, the requirements of § 1355.52(i)(1)(iii)(A) through (C).

In paragraph (i)(1)(iii)(A), we specify that the title IV–E agency report in the APD or Notice of Intent whether an automated function supports (or when implemented will support) at least one of the CCWIS requirements listed at § 1355.52 or, if applicable, CCWIS options as described in § 1355.54.

We did not receive any comments on paragraph (i)(1)(iii)(A) and made no changes.

In paragraph (i)(1)(iii)(B), we specify that the title IV–E agency report in the APD or Notice of Intent whether an automated function is not (or when implemented will not be) duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare workers responsible for the area supported by the automated function.

*Comment:* One commenter asked if the requirement would apply to a “contract service provider.” The commenter noted the title IV–E agency may be unaware of duplicate functionality in a contract service provider’s system since federal funds were not used for that system and therefore the title IV–E agency does not monitor them.

*Response:* We would like to clarify that if a “contract service provider” is a CWCA and its system has automated functions that are duplicated by CCWIS, CCWIS funding is not available for those automated functions. We believe that title IV–E agencies would be able to discover duplicate functionality in a CWCA system. As CWCA’s are established by agreement or contract with the title IV–E agency to provide specific services, the title IV–E agency will know what activities that agency supports. Furthermore, if the CWCA is providing the CCWIS data related to those activities that are also performed in the CCWIS, the function is duplicated.

We remind title IV–E agencies they have options to address the issue of CWCA systems duplicating CCWIS automated functions. For example, the title IV–E agency may:

- Require some or all CWCA’s to use CCWIS.
- Monitor agency systems for duplicate automated functions. Agencies have tools other than system

audits to detect duplicated functionality. For example, duplicate functionality may be indicated if a CWCA submits CCWIS data that is also generated by a CCWIS automated function.

- Claim non-CCWIS cost allocation for CCWIS automated functions duplicated by a CWCA system.

Finally, we remind title IV–E agencies that the existence of duplicated functionality will not cause ACF to classify a system as non-CCWIS. The agency may claim non-CCWIS cost allocation for the duplicated function. The system may remain a CCWIS.

In paragraph (i)(1)(iii)(C), we specify that the title IV–E agency report in the APD or Notice of Intent whether an automated function complies (or when implemented will comply) with CCWIS design requirements described under § 1355.53(a), unless exempted in accordance with § 1355.53(b).

We received no comments on this paragraph and made no changes.

In paragraph (i)(2), we require title IV–E agencies to submit new information in their annual Operational APDs and Annual APD Updates for all CCWIS projects. The new information required by this paragraph includes an updated list of automated functions incorporated in CCWIS, a notation of whether each automated function listed in § 1355.52(i)(2)(i) meets (or when implemented will meet) the requirements of § 1355.52(i)(1)(iii)(B), and a description of any changes to the scope or the design criteria described at § 1355.53(a) for any automated function listed in § 1355.52(i)(2)(i).

We received no comments on these paragraphs and made no changes.

In paragraph (j), we specify that a title IV–E agency claiming title IV–E FFP for a CCWIS project below the APD submission thresholds at 45 CFR 95.611, will be subject to certain portions of the APD rules that we have determined are necessary for effective project management.

We received no comments on this paragraph and made no changes.

#### *CCWIS Design Requirements (§ 1355.53)*

In paragraph (a), we specify the design requirements for a CCWIS.

*Comment:* Several commenters expressed concern that currently approved and non-approved S/TACWIS systems would have to be completely rebuilt because they do not comply with the CCWIS design requirements.

*Response:* As noted in our proposal, we encourage title IV–E agencies to consider using an existing S/TACWIS or non-S/TACWIS as the foundation of a CCWIS. This allows the agency to

preserve information technology investments in a S/TACWIS or non-S/TACWIS system because large portions of such a system probably meet some CCWIS requirements, and the title IV-E agency may enhance the system to meet the remaining CCWIS requirements. In paragraph § 1355.53(b)(1), we exempt CCWIS automated functions from one or more of the CCWIS design requirements in § 1355.53(a) if the CCWIS project meets the requirements of § 1355.56(b) (submission requirements during the transition period) or § 1355.56(f)(1) (submission of APD or Notice of Intent during the transition period). We allow this exemption so that title IV-E agencies do not have to replace existing automated functions of S/TACWIS and non-S/TACWIS projects transitioning to CCWIS if the automated functions do not meet the proposed design requirements of § 1355.53(a). This will reduce the costs of transitioning these systems to CCWIS.

*Comment:* One commenter noted that it may be difficult to transition a S/TACWIS to a CCWIS meeting the CCWIS design requirements. The commenter noted that designs that separated business rules from core programming could not be built on a S/TACWIS that had not met this requirement.

*Response:* We would like to clarify that a title IV-E agency is not required to follow the CCWIS design requirements for enhancements to their existing system per § 1355.57(a)(1).

*Comment:* Several commenters noted that if title IV-E agencies are responsible for the quality of data provided from other programs and if the data exchange requirements of § 1355.52(e) are not clarified, it will be difficult to comply with the CCWIS design requirements.

*Response:* We would like to clarify that the CCWIS data quality review process will identify problems with “relevant” data exchanged with other systems and prioritize changes to improve the data. We disagree that data quality problems in the system exchanges make it difficult to comply with the CCWIS design requirements. Our responses to comments under § 1355.52(e) provide relevant clarifications to the data exchange requirements. We encourage title IV-E agencies to contact us if additional clarifications are needed.

*Comment:* One commenter asked if we have established minimum standards title IV-E agencies must follow when selecting vendors or proprietary products.

*Response:* We would like to clarify that all products, like other modules, must be able to communicate reliably with other CCWIS modules. This includes vendor or proprietary products. Products must also meet the specific requirements of the state, tribal, or industry standard selected by the title IV-E agency per paragraph (a)(3).

In paragraph (a)(1), we specify that CCWIS automated functions must follow a modular design that includes the separation of business rules from core programming.

*Comment:* Several commenters recommended that, to promote reusability, we specify each module’s functions, inputs and outputs as well as diagramming the relationships between modules. One commenter recommended adding a definition of “reusable module” to describe the components. Another commenter recommended we set national standards for the most common data exchanges as this would eliminate potential incompatibilities and assist states in developing reusable modules.

*Response:* We are not making changes in response to these comments. While we agree that requiring all title IV-E agencies to build modules to the same set of specifications would promote reusability, such specifications would reduce agency flexibility to design systems tailored to their policies and business processes. We are not adding a definition of “reusable module” in order to provide title IV-E agencies, in collaboration with the industry, the flexibility to design modules best suited to agency business needs.

We continue to work with the NIEM Human Service Domain to develop common data exchanges. Although we will not establish these data exchanges as a required national standard, we encourage their use as agencies develop CCWIS systems, if it is suitable for the agency.

*Comment:* A number of commenters recommended we not require the separation of business rules from core programming where a state’s best judgment is that such a separation does not make sense. While acknowledging that states could seek a waiver per paragraph (b), commenters thought it was not efficient and economical to require waivers for this requirement. Several commenters also requested we evaluate the burden of separating business rules from core processing in existing SACWIS systems.

*Response:* We are not making a change in response to this comment because the separation of business rules from core programming promotes reusability by simplifying re-work

needed to modify modules for use by title IV-E agencies with different business rules.

We are not evaluating the burden of separating business rules from core processing in existing S/TACWIS systems because an existing SACWIS system that is used as the basis of a CCWIS system is not required to meet the design requirements at § 1355.53(a)(1). Even then, automated functions developed after the transition period may be exempted if the agency submits an alternative design that is approved by ACF per § 1355.53(b). We also note that the waiver process for an existing system transitioning to a CCWIS is categorically defined in these rules and therefore is not onerous to establish.

*Comment:* A commenter noted that modularity provides benefits, but depending upon how it is designed and implemented, can increase costs and complexity. The commenter recommended that states select modular approaches that are cost effective.

*Response:* We agree that the design approach affects CCWIS costs and the complexity of the software. However, the savings realized by decreased operational costs of well-designed systems and the reusability of these modules should offset the initial modular development costs. We note that this paragraph does not require a specific design approach so that a title IV-E agency can select an efficient, economical, and effective approach suitable to the agency’s business processes and technological environment.

*Comment:* One commenter asked that we define “core programming” and provide our vision of separating business rules from core programming.

*Response:* We are not adding a definition of “core programming” beyond distinguishing it from business rules per the requirement, to provide title IV-E agencies with the flexibility to design modules in a cost effective manner that may be shared and reused.

*Comment:* One commenter asked if this requirement applies only to new development. The commenter also asked what the benefit of this requirement is to states that are already modular and SACWIS compliant.

*Response:* We would like to clarify that the CCWIS design requirements only apply to new development on a S/TACWIS transitioning to CCWIS regardless of whether the existing S/TACWIS is modular or not. The requirement provides the benefits of modularity to all systems.

*Comment:* Several commenters, while indicating support for the rule’s definition of modularity, expressed

concern that industry may not be able to support this definition.

*Response:* We would like to clarify that information technology commenters on the NPRM did not express concern with the definition. We note that the information technology industry has long promoted modular design and developed many successful products based on these principles. Some federal government agencies encourage modular design in policy issuances and established rules, such as in the CMS rule at 42 CFR 433.112(b)(10).

*Comment:* One commenter asked if this requirement applied to Software as a Service systems owned or maintained by vendors.

*Response:* We would like to clarify that this requirement does not apply to Software as a Service systems owned or maintained by vendors.

In paragraph (a)(2), we specify that title IV–E agencies must document CCWIS automated functions with plain language.

*Comment:* Several commenters recommended we incorporate the time and cost of training staff to document automated functions in plain language and the cost of this translation into the impact analysis. They recommended that to save time, staffing, and resources the requirement should be for “concise and effective” documentation. Commenters also asked if this requirement would apply retroactively.

*Response:* We are not increasing impact analysis costs in response to this comment because this requirement is an industry standard best practice proven to reduce overall system development and maintenance costs.

We are not changing the requirement because “concise and effective documentation” is consistent with this paragraph.

Finally, we would like to clarify that this is not a retroactive requirement applicable to automated functions in existing systems. It applies to documentation associated with new automated functions developed for a CCWIS.

In paragraph (a)(3), we specify that automated functions contained in CCWIS must adhere to a state, tribal, or industry defined standards that promotes efficient, economical, and effective development of automated functions and produce reliable systems.

*Comment:* Several commenters asked if the state must use one standard for all functions or if it is permissible to use different standards for different functions. The commenters were concerned that it would limit state

flexibility if only one standard is permitted.

*Response:* We would like to clarify that the requirement is for a single standard. However, we encourage title IV–E agencies to select or design a standard that accommodates variations in their development approach. It is acceptable for the documented standard to apply certain requirements for one set of conditions and other requirements for other conditions.

*Comment:* Several commenters recommended we include the cost of drafting a waiver request per paragraph (b) for this requirement in the impact analysis.

*Response:* We would like to clarify that the APD rule included the burden estimate of providing a business case for any purpose, including requesting rule waivers. We also note that the waiver process for an existing system transitioning to a CCWIS is categorically defined in paragraph (b)(1) and is not onerous to establish.

In paragraph (a)(4), we specify that CCWIS automated functions must be capable of being shared, leveraged, and reused as a separate component within and among states and tribes.

*Comment:* Several commenters requested we clarify the process by which states would be able to share components, including all relevant scenarios.

*Response:* We would like to clarify the two general processes by which title IV–E agencies may share components. First, ACF may request software and associated documents for the federal repository per requirements at § 1355.52(h). ACF may then share these products with title IV–E agencies at the agency’s request. Second, title IV–E agencies may directly share products with other agencies.

We acknowledge there may be variations on these processes and encourage title IV–E agencies to contact us for guidance. The requirement for sharing federally funded software between states has been required in the APD rule prior to 1993.

*Comment:* One commenter asked if this paragraph implied that the automated functions must be “plug and play”.

*Response:* We would like to clarify that the automated functions are not required to adapt to different hardware configurations without manual configuration (plug and play).

*Comment:* One commenter noted that the variation between state and tribal child welfare programs might limit the reuse of CCWIS automated functions designed for a specific title IV–E agency’s requirements.

*Response:* We would like to clarify that this paragraph requires automated functions to be reusable. We expect that title IV–E agencies will reuse modules when it is efficient, economical, and effective to do. We do not require modules be reused when it is not appropriate, such as when a module does not support an agency’s business processes.

In paragraph (b), we specify that CCWIS automated functions may be exempted from one or more of the CCWIS design requirements in § 1355.53(a) under certain conditions.

In paragraph (b)(1), we specify that CCWIS automated functions may be exempted from one or more of the CCWIS design requirements in § 1355.53(a) if the CCWIS project meets the requirements of § 1355.56(b) or (f)(1).

*Comment:* One commenter asked if existing data exchanges are included in the exemption provided by paragraph (b)(1).

*Response:* We would like to clarify that automated functions, including data exchanges, that have been implemented in a system meeting the requirements of § 1355.56(b) or (f)(1) may be exempted from one or more of the CCWIS design requirements under certain conditions.

In paragraph (b)(2), we specify that CCWIS automated functions may be exempted from one or more of the CCWIS design requirements in § 1355.53(a) if ACF approves, on a case-by-case basis, an alternative design proposed by a title IV–E agency that is determined by ACF to be more efficient, economical, and effective than what is found in paragraph (a).

*Comment:* Several commenters asked us to clarify our process for reviewing exemption requests received in accordance with paragraph (b)(2).

*Response:* We would like to clarify that the review process for exemption requests will be clarified in later technical assistance and will include the submission of a business case explaining the rationale for the alternative design.

*Comment:* Several commenters recommended we clarify the criteria or the sufficient evidence and the burden of proof necessary to grant an exemption in accordance with these requirements.

*Response:* We would like to clarify that we cannot anticipate how technology might change and so cannot provide specific criteria that unknown innovations must satisfy to qualify for an exemption. However, we would like to reiterate that the review process for exemption requests is governed by the

existing APD rules at 45 CFR part 95, subpart F.

#### *CCWIS Options (§ 1355.54)*

We specify in § 1355.54 that if a project meets, or when completed will meet, the requirements of § 1355.52, then ACF may approve CCWIS funding described at § 1355.57 for other ACF-approved data exchanges or automated functions that are necessary to achieve title IV–E or IV–B program goals.

*Comment:* A number of commenters were concerned that the CWCA definition precluded agencies from implementing exchanges with entities that did not conform to the definition. Another commenter emphasized the importance of service data, particularly substance abuse, mental health, and other treatment data in order to increase child safety and well-being.

*Response:* We would like to clarify that § 1355.54 permits title IV–E agencies to implement optional data exchanges in addition to the mandatory data exchanges specified in § 1355.52(e). These optional data exchanges may include entities that are not CWCAs. For example, title IV–E agencies may implement data exchanges with service providers, such as providers of substance abuse, mental health, and other treatment services. Another example of optional data exchanges includes an exchange between tribes and states to support state efforts to comply with ICWA and share case-level information. Yet another example is an exchange between title IV–E agencies and Social Security Administration to support timely automated verification of Social Security Numbers and identification of client benefit information.

*Comment:* One commenter asked if all data exchanges must be bi-directional. The commenter noted there may be circumstances where either the title IV–E agency or another agency, but not both, would benefit from a data exchange.

*Response:* We would like to clarify that while § 1355.52(e) uses the express term “bi-directional data exchange” when referring to required data exchanges, § 1355.54 does not, and the term “data exchange” here includes both uni-directional and bi-directional data exchanges. Therefore, CCWIS may include uni-directional optional data exchanges.

However, § 1355.54 requires that the data exchange benefit title IV–B or title IV–E programs to receive CCWIS funding. Therefore, exchanges benefiting the title IV–E agency may be eligible for CCWIS funding, but exchanges not benefiting the title IV–E

agency must be cost allocated to the benefiting program or programs.

*Comment:* One commenter noted that the rule should not provide a “wish list” but provide states with the option (but not the mandate) to go beyond minimum requirements.

*Response:* We would like to clarify that this rule establishes the minimum requirements. This section provides title IV–E agencies with the option to implement data exchanges and automated functions that are not covered by the minimum requirements.

#### *Review and Assessment of CCWIS Projects (§ 1355.55)*

In § 1355.55, we specify that ACF will review, assess, and inspect the planning, design, development, installation, operation, and maintenance of each CCWIS project on a continuing basis, in accordance with APD requirements in 45 CFR part 95, subpart F, to determine the extent to which the project meets the requirements in §§ 1355.52, 1355.53, 1355.56, and, if applicable, § 1355.54.

*Comment:* Several commenters asked us to clarify how ACF will conduct reviews on a “continuing basis” and requested we update the impact analysis to reflect the additional work required of state staff.

*Response:* We would like to clarify this is not a new requirement. We have conducted continuing reviews of S/TACWIS in collaboration with title IV–E agencies for the past 20 years in accordance with § 1355.55(a). While some reviews are comprehensive and determine compliance with all requirements, most reviews target a subset of requirements or specific implementation topics or project issues.

*Comment:* Some commenters asked for clarification on ACF’s approach for reviewing CCWIS projects and recommended we clarify the criteria for reviews, such as in a published checklist. They note that such guidance may reduce delays and costs. One commenter asked if the reviews would be similar to SACWIS reviews.

*Response:* We would like to clarify that our reviews will evaluate aspects of CCWIS such as: System functionality, CCWIS design requirements, data quality requirements, and compliance with data exchange standards, as well as the requirements specific to new CCWIS projects and projects transitioning to CCWIS as described in the proposed sections on funding, cost allocation, and submission requirements. The reviews will measure compliance with requirements in §§ 1355.52, 1355.53, 1355.56, and, if applicable, § 1355.54. If a title IV–E agency builds a CCWIS

similar to a full-functioned S/TACWIS, the CCWIS review may be similar to a S/TACWIS review. However, if the CCWIS has a different configuration, we will tailor the review to evaluate the configuration.

We agree that guidance may reduce delays and costs. Just as we published a review guide for comprehensive S/TACWIS reviews, we will also publish a CCWIS review guide and provide additional technical assistance. Similar to S/TACWIS reviews, we will work collaboratively with the title IV–E agency prior to a review to clarify expectations, answer questions, and provide technical assistance.

*Comment:* Several commenters asked that the rule clarify any differences between the scope of reviews for:

- (a) projects over the \$5 million threshold requiring an APD; and
- (b) projects under the \$5 million threshold requiring the submission of a Notice of Intent.

*Response:* We would like to clarify that the review requirements are the same for all CCWIS projects. The extent and scope may vary depending upon the factors such as the size of the CCWIS, the child welfare policies supported by the CCWIS, and whether CWCAs use CCWIS.

*Comment:* One commenter asked if the CCWIS reviews would be like SACWIS reviews or solely based on the state’s data quality plan.

*Response:* We would like to clarify that we intend to continue the practice established under the S/TACWIS rule of conducting monitoring as well as comprehensive reviews. CCWIS reviews may include, but not be limited to, the title IV–E agency’s data quality plan.

*Comment:* A number of commenters asked what data quality metrics ACF would use during the reviews.

*Response:* As we noted in our response under § 1355.52(d)(1), we will use the standards in federal laws, regulations, and policies for evaluating data quality for federally required data described in § 1355.52(b)(1). We will apply the standards established by the state or tribe when evaluating the quality of required state or tribal data described in § 1355.52(b)(2). If these two standards apply to the same data, ACF will apply the more rigorous standard. For example, if one standard required updating certain CCWIS data in seven days and a second standard set a two-day limit, the two-day limit applies.

*Comment:* One commenter asked if we required an independent verification and validation (IV&V) for CCWIS design, implementation, and data quality reviews.



*Response:* We would like to clarify that ACF may require an IV&V per 45 CFR 95.626. This rule does not specify additional IV&V requirements.

*Requirements for S/TACWIS and Non-S/TACWIS Projects During and After the Transition Period (§ 1355.56)*

In this section, we outline the requirements during and after the transition period for S/TACWIS and non-S/TACWIS projects. We received several general comments on this section as follows:

*Comment:* Several commenters asked that we clarify the requirements that must be met by: (1) States building a new system; (2) states transitioning their S/TACWIS to a CCWIS; and (3) states wanting to enhance their S/TACWIS, but not develop a CCWIS.

*Response:* We would like to provide the following clarifications: (1) A title IV–E agency building a new CCWIS must meet the requirements at paragraph (c) or paragraph (f)(2), as applicable. In addition, an agency building a new CCWIS must also meet the requirements of §§ 1355.52, 1355.53, and, if applicable 1355.54.

(2) A title IV–E agency transitioning their S/TACWIS to a CCWIS must meet the requirements at paragraph (b). In addition, an agency with a S/TACWIS transitioning to CCWIS must also meet the requirements of § 1355.52, and, if applicable § 1355.53 for new development and § 1355.54.

(3) A title IV–E agency that wants to enhance their S/TACWIS, but not develop a CCWIS must meet the requirements at paragraph (d). ACF will classify these systems as non-CCWIS. No other requirements of this rule apply to non-CCWIS systems. However, title IV–E agencies with a S/TACWIS that do not meet the requirements of paragraph (d) may be subject to funding recoupment as described under paragraph (e).

We also clarify that none of the requirements of the rule apply to title IV–E agencies without a S/TACWIS that decide not to build a CCWIS. In these circumstances, the title IV–E agency continues to follow the rule at 45 CFR part 95, subpart F for developing, implementing, and operating their non-S/TACWIS as a non-CCWIS.

*Comment:* One commenter was concerned that their state would be unable to meet the CCWIS requirements with available funding in the timeframe specified. Another commenter asked if there is a deadline for completing a S/TACWIS to CCWIS transition.

*Response:* We would like to clarify that the timeframe specified in this section is the 24-month “transition

period” for a title IV–E agency with a S/TACWIS or non-S/TACWIS to determine whether the agency will transition that system to CCWIS. This rule does not establish the timeframe for meeting CCWIS requirements with a new CCWIS or a system transitioning to CCWIS. The title IV–E agency must propose a timeframe in the applicable APD.

In paragraph (a), we specify that during the transition period, a title IV–E agency with a S/TACWIS project may continue to claim title IV–E funding according to the cost allocation methodology approved by ACF for development or the operational cost allocation plan approved by the Department, or both.

*Comment:* One commenter asked if title IV–E agencies must use the existing cost allocation methodology or if a new methodology is required.

*Response:* We would like to clarify that S/TACWIS projects may use their existing S/TACWIS cost allocation methodology during the 24-month transition period, per this paragraph. After the transition period, CCWIS and non-CCWIS projects follow the cost allocation rules in § 1355.57. A S/TACWIS project may also elect to immediately move to a non-CCWIS cost allocation methodology. Finally, all title IV–E agencies may elect to immediately start a new CCWIS project and use a new cost allocation methodology approved by ACF for that project.

*Comment:* One commenter noted their state is continually enhancing their mature SACWIS and asked if the state is expected to get ACF approval before implementation of enhancements.

*Response:* We would like to clarify that the APD rule continues to apply to all child welfare systems. We will continue to respond to APDs within 60 days.

In paragraph (b), we specify that a S/TACWIS project must meet the submission requirements of § 1355.52(i)(1) during the transition period to qualify for the CCWIS cost allocation methodology described in § 1355.57(a) after the transition period.

*Comment:* Several commenters asked for additional guidance on the implications of transitioning a S/TACWIS to CCWIS.

*Response:* We would like to clarify that a S/TACWIS that is compliant with the S/TACWIS requirements may be able to achieve CCWIS compliance by developing the new bi-directional data exchanges required by § 1355.52(e) and documenting their data quality procedures in the data quality plan required by § 1355.52(d)(5). However, we caution readers that this is general

guidance and is not applicable in every situation. We encourage title IV–E agencies to review their information system and consult with us during the 24-month transition period to assess the effort to comply with CCWIS requirements.

*Comment:* A commenter requested that the rule provide title IV–E agencies with the flexibility to develop or revise existing systems to collect required data. Another commenter noted that states and jurisdictions may not have the resources to build a new system.

*Response:* We would like to clarify that this paragraph permits title IV–E agencies to develop or revise (*i.e.*, transition) their existing S/TACWIS to CCWIS. It may be less costly to develop new bi-directional data exchanges required by § 1355.52(e) and documenting data quality procedures in the data quality plan required by § 1355.52(d)(5) than it would be to implement this same activities along with developing a new system.

*Comment:* One commenter recommended that the 24-month transition period should not begin until ACF issues sub-regulatory guidance with further clarifications because this additional guidance is needed for states to decide if they want to transition a S/TACWIS or non-S/TACWIS to CCWIS.

*Response:* We are not making a change in response to this comment as the rule adequately defines the scope of CCWIS. Although, as noted in other responses, we do intend to issue additional guidance, this guidance is not necessary during the transition stage when agencies review their policies, practices, and IT capabilities to assess whether CCWIS is appropriate to support their business practices. We encourage title IV–E agencies to contact us to review issues specific to their agency.

We also note that title IV–E agencies may start a new CCWIS project at any time. The 24-month transition period (including a decision and the submission of certain documentation) only applies to: (1) a S/TACWIS transitioning to a CCWIS; (2) a S/TACWIS not transitioning to a CCWIS; or (3) a non-S/TACWIS transitioning to CCWIS.

*Comment:* A few commenters recommended we change the 24-month transition period to provide states with more time. One commenter requested we extend the transition period while another commenter recommended we permit states to transition to CCWIS at any time.

*Response:* We are not making a change to this paragraph because we do not require agencies to complete the

transition during the 24-month period. This paragraph requires title IV–E agencies transitioning a S/TACWIS to CCWIS to submit the required documentation notifying ACF of this plan during the 24-month transition period. We believe that 24 months is sufficient time for this decision. We note that agencies may build a new CCWIS, or modify an existing S/TACWIS to meet CCWIS requirements at any time, although the agency will be subject to the funding requirements of § 1355.57(b) instead of § 1355.57(a).

*Comment:* A few commenters asked what happens to SACWIS action plans and SACWIS Assessment Review Guide updates if a state decides to transition a SACWIS to CCWIS.

*Response:* Title IV–E agencies that notify ACF pursuant to the requirements at paragraph (b) that they are transitioning a S/TACWIS to CCWIS are not required to complete S/TACWIS action plans or provide S/TACWIS Assessment Review Guide updates. While S/TACWIS action plans will be closed, it is possible that the S/TACWIS issue identified during a S/TACWIS Assessment Review will also be a CCWIS compliance issue that will be identified during a subsequent CCWIS Assessment Review.

In paragraph (c), we specify that a title IV–E agency with a S/TACWIS may request approval to initiate a new CCWIS and qualify for the CCWIS cost allocation methodology described in § 1355.57(b) by meeting the submission requirements of § 1355.52(i)(1).

*Comment:* One commenter recommended that the rule provide states and jurisdictions with the option to build a new CCWIS within an extended timeframe to provide them with sufficient time to plan strategically.

*Response:* We are not making a change in response to this comment because there is no deadline for title IV–E agencies to elect to build a new CCWIS.

*Comment:* One commenter asked if title IV–E agencies that transition a S/TACWIS to CCWIS retain the option to build a new CCWIS later.

*Response:* We would like to clarify that a title IV–E agency may initiate a new CCWIS project at any time. If a title IV–E agency transitions a S/TACWIS to CCWIS and then decides to develop a new CCWIS, the agency would inform ACF via the APD process described in 45 CFR 95.610(c)(2) or the Notice of Intent described in this rule.

In paragraph (d), we specify requirements for a title IV–E agency that elects not to transition a S/TACWIS project to a CCWIS project. In paragraph (d)(1), we specify that a title IV–E

agency must notify ACF in an APD or Notice of Intent submitted during the transition period of this election not to transition a S/TACWIS project to a CCWIS project. In paragraph (d)(2), we specify that the title IV–E agency that elects not to transition its S/TACWIS must continue to use S/TACWIS throughout its life expectancy in accordance with 45 CFR 95.619.

*Comment:* Several commenters asked us to clarify the requirements of paragraph (d)(1) by providing specific language for notifying ACF that a state does not intend to transition a S/TACWIS to CCWIS.

*Response:* We would like to clarify that APD rules include reporting changes in an APD Update per 45 CFR 95.610(c)(2), but do not specify the specific language title IV–E agencies must use. In this case, an APD Update, or a Notice of Intent for a project under the \$5 million threshold, notifying ACF that the title IV–E agency is not transitioning a S/TACWIS to CCWIS is sufficient.

*Comment:* A few commenters asked us to clarify the funding implications for states deciding to remain a SACWIS. One asked if SACWIS would be “decommissioned” and, if so, what would be the impact upon funding.

*Response:* We would like to clarify that 24 months after the effective date of the rule (transition period) title IV–E agency child welfare information systems are classified as CCWIS or non-CCWIS. If a title IV–E agency decides not to transition their S/TACWIS to CCWIS, the system will be classified as a non-CCWIS and receive non-CCWIS funding. ACF will not “decommission” a S/TACWIS that is following the requirements of paragraph (d). If the title IV–E agency does not follow the requirements of paragraph (d), the S/TACWIS may be subject to recoupment of FFP per paragraph (e).

*Comment:* One commenter asked if SACWIS may establish data exchanges with external systems per the waiver provisions of 45 CFR 95.627.

*Response:* As noted above, after the transition period, ACF will classify all S/TACWIS systems as CCWIS or non-CCWIS. We would like to clarify that non-CCWIS systems may build data exchanges with external systems without a waiver but must follow the applicable APD rule. The non-CCWIS system may receive non-CCWIS funding to build data exchanges.

*Comment:* One commenter noted that the state does not have the resources at this time to implement a CCWIS.

*Response:* We would like to clarify that, per this paragraph, title IV–E agencies with a S/TACWIS may decide

not to transition to CCWIS. We note that agencies may implement a new CCWIS at any time.

In paragraph (e), we specify that a title IV–E agency that elects not to transition its S/TACWIS project to a CCWIS and fails to meet the requirements of paragraph (d) of this section is subject to funding recoupment described under § 1355.58(d).

*Comment:* One commenter asked if there were financial penalties for using a SACWIS beyond the 24-month transition period.

*Response:* There is no penalty for using a S/TACWIS beyond the 24 month transition period. However, we would like to clarify that S/TACWIS systems that do not transition to CCWIS do not maintain S/TACWIS level cost allocation after the 24-month transition period. After the transition period, the rule classifies these systems as non-CCWIS and they may qualify for non-CCWIS cost allocation.

In paragraph (f), we specify that a title IV–E agency with a non-S/TACWIS (as defined in § 1355.51) that elects to build a CCWIS or transition to a CCWIS must meet the submission requirement of § 1355.52(i)(1). In paragraph (f)(1), we specify that the APD or Notice of Intent must be submitted during the transition period to qualify for a CCWIS cost allocation as described at § 1355.57(a). In paragraph (f)(2), we specify that a title IV–E agency may submit an APD or, if applicable, a Notice of Intent at any time to request approval to initiate a new CCWIS and qualify for a CCWIS cost allocation as described at § 1355.57(b).

We received no comments on these paragraphs and made no changes.

#### *Cost Allocation for CCWIS Projects (§ 1355.57)*

*Comment:* Some commenters noted that the funding may not be sufficient for states to transition to a CCWIS or build a new CCWIS. Several commenters noted that it is more costly for title IV–E agencies to implement systems with the current 50 percent FFP rate as compared to the 75 percent FFP rate offered through Federal Fiscal Year 1997.

*Response:* We are not making a change in response to this comment because we do not have the statutory authority to provide a 75 percent FFP rate for CCWIS. The rate of FFP is set by section 474(a)(3)(C) and (D) of the Act.

*Comment:* A few commenters noted that the rule only offers FFP for systems determined to be in development and not for operational costs. Additionally, one commenter also cited the costs of

technology upgrades and changes to meet new federal reporting requirements as operational costs that should qualify for the federal financial participation.

*Response:* We would like to clarify that FFP is available for both development and operation costs. As noted in the table on page 48220 of the NPRM, the CCWIS development and operational cost allocation methodologies both allocate to title IV-E programs the costs benefiting state or tribal funded participants of programs and activities described in title IV-E. In addition, CCWIS post-implementation costs may qualify for CCWIS developmental or operational cost allocation. While technology upgrade costs may qualify for CCWIS operational cost allocation, new federal reporting requirements may also meet the definition of “development” at 45 CFR 95.605 so as to qualify for CCWIS development cost allocation. We encourage title IV-E agencies to contact us for technical assistance regarding whether specific upgrades meet the regulatory definition of “development.”

*Comment:* One commenter asked us to clarify the cost allocation methodologies so that states can more accurately estimate the budgetary impact of a decision to build a CCWIS. The commenter also asked why an operational CCWIS or non-CCWIS cannot allocate costs supporting title IV-B to title IV-E.

*Response:* The cost allocation methodologies for CCWIS and non-CCWIS systems are provided in the table on page 48220 of the NPRM. We would like to clarify that federal statute does not allow CCWIS operational or non-CCWIS costs benefiting title IV-B to be allocated to title IV-E.

*Comment:* A few commenters noted that building a CCWIS may require states to reallocate staff providing direct services to the CCWIS project. To avoid a reduction in direct services, the commenter recommended we either provide teams of technical experts or provide funds for states to hire or contract for additional experts.

*Response:* We agree that the participation of child welfare program staff is needed to build any child welfare information system, including CCWIS. We would like to clarify that agencies may request FFP for experts to assist with CCWIS projects. We also note that title IV-E agencies may build a CCWIS in stages, which may reduce the need to reallocate staff.

*Comment:* One commenter asked what project documentation must be submitted to qualify for CCWIS cost allocation.

*Response:* We would like to clarify that § 1355.52(i)(1) specifies the required documentation. The required documentation is (1) a project plan and (2) a list of CCWIS automated functions specifying which automated functions meet certain criteria. The title IV-E agency submits the required documentation with an APD or, if the project is below APD thresholds, a Notice of Intent.

*Comment:* One commenter recommended that CCWIS funding be made available to support other programs developing data exchanges with CCWIS.

*Response:* We are not making a change based on these comments because sections 474(a)(3)(C) and (D) of the Act only provide the authority for title IV-E funding for the planning, design, development, installation, and operation of a data collection and information retrieval system and the requirements a title IV-E agency must meet to receive federal financial participation (FFP).

In paragraph (a), we specify cost allocation requirements for projects transitioning to CCWIS.

In paragraph (a)(1), we specify that all automated functions developed after the transition period for projects meeting the submission requirements in § 1355.56(b) or (f)(1) must meet the CCWIS design requirements described under § 1355.53(a), unless exempted by § 1355.53(b)(2). In paragraph (a)(2), we specify two requirements an automated function of a project transitioning to CCWIS must meet in order for the Department to consider approving the applicable CCWIS cost allocation.

In paragraph (b), we specify cost allocation requirements for new CCWIS projects. In paragraph (b)(1), we specify that unless ACF grants the title IV-E agency an exemption in accordance with § 1355.53(b)(2), all automated functions of a new CCWIS project must meet all the CCWIS design requirements described under § 1355.53(a) to qualify for CCWIS cost allocation.

In paragraph (b)(2), we specify the requirements an automated function must meet to qualify for CCWIS cost allocation. In paragraph (b)(2)(i), we specify that an automated function must support programs authorized under titles IV-B or IV-E, and at least one requirement of § 1355.52 or, if applicable § 1355.54.

In paragraph (b)(2)(ii), we specify that an automated function must not be duplicated within the CCWIS or systems supporting child welfare contributing agencies and be consistently used by all child welfare users responsible for the

area supported by the automated function.

We received several comments that address both paragraphs (a) and (b) simultaneously, and therefore, respond to comments from both paragraphs (a) and (b) below.

*Comment:* Several commenters recommended we add a new category of “enhancement” to the existing categories of “development” and “operation” defined at 45 CFR 95.605 to provide additional funding to encourage the agile and iterative improvement of CCWIS.

*Response:* We would like to clarify that “enhancement” is defined at 45 CFR 95.605 and that an enhancement to a system may be classified as either development or operations. We are not making a change to 45 CFR 95.605.

*Comment:* One commenter asked if title IV-E agencies could use CCWIS funds for the development of modules that are not case management related but improve the case management process.

*Response:* We would like to clarify that CCWIS funds may be used for the development of automated functions in the CCWIS that support the requirements of paragraphs (a)(2)(i) and (ii). These requirements may include automated functions that improve the case management process.

*Comment:* A commenter asked if states could use CCWIS funding only for the required areas of intake, title IV-E eligibility, case management, financial management, resource management, court processing, reporting, interfaces, administrative support, and security. The commenter also asked if states could purchase modules supporting CCWIS functions.

*Response:* We would like to clarify that CCWIS data is required but title IV-E agencies have the flexibility to collect the data using automated functions that may or may not qualify for CCWIS funding. We also note that title IV-E agencies may request a waiver to purchase COTS products per Program Instruction ACYF-CB-PI-11-08.

*Comment:* Several commenters suggested that, per paragraph (b)(2)(ii), precluding federal funding for any “other systems supporting child welfare agencies” is overly broad.

*Response:* We would like to clarify that this rule does not preclude non-CCWIS title IV-E funding for title IV-E external or child welfare contributing agency systems. However, this comment identified an inconsistency between (a)(2)(ii) and (b)(2)(ii) and we are making two changes to align these two sections. First in (a)(2)(ii) we are deleting the term “either” in the phrase

“is not duplicated within *either* the CCWIS or systems supporting child welfare agencies . . . .” Second, in (b)(2)(ii) we are deleting the term “other” in the phrase “is not duplicated within the CCWIS or *other* systems supporting child welfare agencies . . . .” These changes will align (a)(2)(ii) and (b)(2)(ii).

*Comment:* A number of commenters noted that this requirement may be difficult to implement in county-administered states where similar functions may be performed at the state and county level. As an example, one commenter noted that their state’s statutory requirements led to the development of business processes that required duplicative functionality at the state and county level for supporting child abuse investigations.

*Response:* We would like to clarify that the CCWIS rule provides greater flexibility than the S/TACWIS rule. The S/TACWIS rule required no duplicate functionality. A single duplicated function, such as for child abuse investigations, could prevent a system from receiving any S/TACWIS funding, even for non-duplicated functions. Under this CCWIS rule, duplicated functionality may qualify for non-CCWIS cost allocation while other automated functions that are not duplicated may qualify for CCWIS cost allocation.

*Comment:* Several commenters were concerned that the phrase “is consistently used by all child welfare users responsible” for the supported area was unclear and so broad as to be unenforceable because states cannot guarantee the actions of all users. Commenters noted that, for example, a bed vacancy control function may be used by large CWCAs but not be needed by small CWCAs.

*Response:* We are not making a change to this requirement because it is not new. We would like to clarify that this paragraph does not require title IV–E agencies to guarantee the actions of all users, but rather determine the child welfare system or systems that staff must use for their work. For example, if some workers did not need a bed vacancy control function, they would not be required to use it. We also note that title IV–E agencies may permit multiple bed vacancy control functions, which may qualify for non-CCWIS cost allocation.

*Comment:* One commenter asked us to define when a new CCWIS project “starts.”

*Response:* We would like to clarify that “project” is defined at 45 CFR 95.605. For the purposes of this rule, a CCWIS project begins when a title IV–

E agency submits documentation per § 1355.52(i)(1) indicating that it is beginning the activities consistent with the definition of a project.

In paragraph (c), we specify that the Department may approve a CCWIS cost allocation for an approved activity for a CCWIS project meeting the requirements of § 1355.57(a) (transitioning projects) or (b) (new CCWIS projects).

We received no comments on this paragraph and made no changes.

In paragraph (d), we specify that the title IV–E agency must allocate project costs in accordance with applicable HHS regulations and guidance.

We received no comments on this paragraph and made no changes.

In paragraph (e), we specify cost allocation requirements for CCWIS development and operational costs.

In paragraph (e)(1), we specify that a title IV–E agency may allocate CCWIS development and operational costs to title IV–E for approved system activities and automated functions that meet three requirements as described in § 1355.57(e)(1)(i), (ii), and (iii).

*Comment:* One commenter asked if FFP for the maintenance costs for COTS products is available.

*Response:* We would like to clarify that FFP for the maintenance costs for COTS products may be available, per Program Instruction ACF–OA–13–01.

In paragraph (e)(1)(i), we specify that the costs are approved by the Department. In paragraph (e)(1)(ii), we specify that the costs must meet the requirements of § 1355.57(a) (transitioning projects), (b) (new CCWIS projects), or (c) (approved activities). In paragraph (e)(1)(iii), we specify that the share of costs for system approved activities and automated functions that benefit federal, state or tribal funded participants in programs and allowable activities described in title IV–E of the Act may be allocated to the title IV–E program.

*Comment:* One commenter provided a list of programs (including alternative response to child protective services interventions, juvenile justice, and adult protective services) and asked us to identify the programs applicable for funding under this paragraph.

*Response:* We are not identifying programs applicable for funding under this paragraph because we do not want to limit CCWIS cost allocation to a specified list. We would like to clarify that we will continue to determine appropriate system costs per APD rules. This approach provides title IV–E agencies with the flexibility to provide a business case in the APD for allocating costs to support specific programs to

CCWIS, including programs unanticipated at this time.

In paragraph (e)(2), we specify that title IV–E agencies may allocate additional CCWIS development costs to title IV–E for the share of system approved activities and automated functions that meet requirements in paragraphs (e)(1)(i) and (ii). These additional costs are described in new paragraphs (e)(2)(i) and (ii). In paragraph (e)(2)(i), we specify that CCWIS development costs benefiting title IV–B programs may be allocated to title IV–E. In paragraph (e)(2)(ii), we specify that CCWIS development costs benefiting both title IV–E and child welfare related programs may be allocated to title IV–E.

We received no comments on these paragraphs and made no changes.

In paragraph (f), we specify that title IV–E costs not previously described in this section may be charged to title IV–E at the regular administrative rate but only to the extent that title IV–E eligible children are served under that program.

*Comment:* Several commenters asked if S/TACWIS systems that do not implement CCWIS will be able to maintain their current funding level after the 24-month transition period.

*Response:* We would like to clarify that S/TACWIS systems that do not transition to CCWIS do not maintain S/TACWIS level cost allocation after the 24-month transition period. After the transition period, the rule classifies these systems as non-CCWIS and they may qualify for non-CCWIS cost allocation. Please see the NPRM for a discussion of CCWIS and non-CCWIS cost allocation methodologies at 80 FR 48220.

*Comment:* A number of commenters asked us if county, consortia, or private agency systems that collect data and exchange it with CCWIS are eligible for FFP. One commenter asked if we considered these potential costs in the impact analysis.

*Response:* We would like to clarify that, per this paragraph, costs for county, consortia, or private agency systems that collect and exchange CCWIS data with CCWIS may be eligible as an administrative cost for the title IV–E agency. We will work with title IV–E agencies on a case-by-case basis to determine how to include these costs in an APD.

We also note that we accounted for all CCWIS costs in the impact analysis.

*Failure To Meet the Conditions of the Approved APD (§ 1355.58)*

In paragraph (a) and in accordance with 45 CFR 75.371 to 75.375 and 45 CFR 95.635, we specify that ACF may

suspend title IV–B and IV–E funding for a CCWIS approved in the APD if ACF determines that the title IV–E agency fails to comply with the APD requirements in 45 CFR part 95, subpart F or fail to meet the CCWIS requirements at § 1355.52 or, if applicable, §§ 1355.53, 1355.54, or 1355.56.

*Comment:* One commenter was concerned that if they planned to modernize their current SACWIS but did not want to transition it to a CCWIS, they may be a risk for “failure to comply” and subject to project suspension.

*Response:* We made a change to paragraph (a) in response to this comment to clarify that § 1355.58 applies only to CCWIS by revising the rule to read: “In accordance with 45 CFR 75.371 through 75.375 and 45 CFR 95.635, ACF may suspend title IV–B and title IV–E funding approved in APD for a CCWIS . . .”

Please see § 1355.56(d) for requirements for S/TACWIS systems that do not transition to CCWIS.

*Comment:* One commenter asked that we clearly state the specific conditions that could lead to a finding of “failure to comply.”

*Response:* We would like to clarify that there are many conditions that could lead to a finding of “failure to comply” with APD requirements. Therefore, we are unable to list all possible scenarios. We intend to continue our practice of working with title IV–E agencies at risk of suspension or recoupment so that they may take proactive corrective action to avoid the suspension or recoupment activities.

In paragraph (b), we specify that the suspension of funding for a CCWIS under this section begins on the date that ACF determines that the agency failed to comply with or meet either the requirements of § 1355.58(b)(1) or (2).

In paragraph (b)(1), we specify that a suspension of CCWIS funding begins on the date that ACF determines the title IV–E agency failed to comply with APD requirements in 45 CFR part 95 subpart F.

In paragraph (b)(2), we specify that a suspension of CCWIS funding begins on the date that ACF determines the title IV–E agency failed to meet the requirements at § 1355.52 or, if applicable, §§ 1355.53, 1355.54, or 1355.56 and has not corrected the failed requirements according to the time frame in the approved APD.

We received no comments on this paragraph and made no changes.

In paragraphs (c) introductory text, (c)(1) and (2) we specify that the suspension of funding will remain in

effect until the date that ACF determines, in accordance with § 1355.58(c)(1), that the title IV–E agency complies with 45 CFR part 95, subpart F; or, in accordance with § 1355.58(c)(2), until ACF approves the title IV–E agency’s plan to change the application to meet the requirements at § 1355.52 and, if applicable, §§ 1355.53, 1355.54, or 1355.56.

*Comment:* One commenter asked that we specify the corrective measures required to end a suspension and reinstate funding. The commenter asked if the title IV–E agency must submit a corrective action plan.

*Response:* We are not making a change to this paragraph as a result of the comment because the specific steps required of an agency will be determined on a case-by-case basis depending on the reasons for the suspension. In some cases it may include a corrective action plan per paragraph (c)(2).

In paragraph (d), we specify that if ACF suspends an APD, or the title IV–E agency voluntarily ceases the design, development, installation, operation, or maintenance of an approved CCWIS, ACF may recoup all title IV–E funds claimed for the CCWIS project.

*Comment:* One commenter recommended that we permit a state to reinvest any proposed financial penalties in enhancing its system when the state makes a strong business case showing the financial and social return of any already received funding and the impact the system has on statewide operations and services to children.

*Response:* We are not making a change to this paragraph as a result of the comment because we are not proposing to issue financial penalties, rather to recoup IV–E funds approved for a CCWIS as specified. Further, it is not an efficient, economical, or effective use of federal funds to allow title IV–E agencies to claim FFP using the CCWIS cost allocation for projects that do not meet the APD or CCWIS requirements. This requirement is not new, rather it incorporates the S/TACWIS requirements at 45 CFR 1355.56(b)(4), with a modification to allow ACF to recoup all FFP approved for the CCWIS consistent with the October 28, 2010 (45 FR 66341) changes in the APD rules at § 95.635.

#### *Reserved (§ 1355.59)*

We reserve § 1355.59 for future regulations related to CCWIS.

#### **Fiscal Requirements (Title IV–E) (§ 1356.60)**

In § 1356.60, we made a conforming change to the title of § 1356.60(e) from

“Federal matching funds for SACWIS/TACWIS” to “Federal matching funds for CCWIS and Non-CCWIS.” We also made a technical revision to describe that federal matching funds are available at the rate of fifty percent (50%) and that the cost allocation of CCWIS and non-CCWIS project costs are at § 1355.57 of this chapter. These changes clarify that while the same matching rate applies to CCWIS and non-CCWIS, the proposed cost allocation requirements at § 1355.57 apply.

We received no comments on this conforming change and made no changes.

#### *Submission of Advance Planning Documents (§ 95.610)*

We made a conforming change to § 95.610(b)(12) so that it conforms with our rule at §§ 1355.50 through 1355.58. We also made a technical change to remove the references to §§ 1355.54 through 1355.57, which is a title IV–E rule, since statutory authority for enhanced funding for information systems supporting the title IV–E program expired in 1997. We also made a conforming change to § 95.610(b)(12) by adding the phrase “or funding, for title IV–E agencies as contained at § 1355.52(i)” because our rule at § 1355.52(i) adds new requirements for CCWIS APDs.

We received no comments on these conforming changes.

#### *Disallowance of Federal Financial Participation (FFP) (§ 95.612)*

We made a conforming change to § 95.612 which provides guidance on conditions that may lead to a disallowance of FFP for APDs for certain information systems. We replaced the phrase “State Automated Child Welfare Information System” with “Comprehensive Child Welfare Information System (CCWIS) project and, if applicable the transitional project that preceded it.” We also made a technical change to the identified CCWIS rule from “§ 1355.56” to “§ 1355.58.”

We received no comments on this paragraph and made no changes.

#### *Increased FFP for Certain ADP Systems (§ 95.625)*

We made technical revisions to § 95.625(a) and (b) to remove the references to title IV–E enhanced funding since statutory authority for enhanced funding for information systems supporting the title IV–E program expired at the end of Federal Fiscal Year 1997.

We received no comments on these technical revisions and made no changes.

## V. Impact Analyses

### *Executive Order 12866 and 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 rule is consistent with these priorities and principles, and represents the best and most cost effective way to achieve the regulatory and program objectives of CB. This rule meets the criteria for a significant regulatory action under EO 12866 and has been reviewed by OMB.

We determined that the costs to states and tribes as a result of this rule will not be significant. First, CCWIS is an optional system that states and tribes may implement; therefore, we have determined that the rule will not result in mandatory increased costs to states and tribes. Second, most if not all of the costs that states and tribes will incur will be eligible for FFP, depending on the cost category and each agency's approved cost allocation plan. States and tribes may be reimbursed 50 percent of allowable costs, applying the cost allocation rate authorized under section 474(a)(3)(C) and (D) of the Act, and section 474(c) of the Act, or at the 50 percent administrative rate authorized under section 474(a)(3)(E) of the Act.

Costs will vary considerably depending upon a title IV–E agency's decision to either: (1) Build a new CCWIS; or (2) transition an existing system to meet CCWIS requirements. Furthermore, the cost of the system will be affected by the optional functions an agency elects to include in the CCWIS. As discussed in the NPRM, we estimate the average historical cost to design, develop, and implement a SACWIS as \$65 million, and the cost to transition an operational system to a CCWIS will be \$34 million.

*Costs.* Several commenters felt the reasonable cost for the creation and development of a CCWIS was, based on their state's experience, significantly higher than the \$65 million estimate provided in the NPRM and requested

we revise the estimate. However, no commenters provided estimates to assist in calculating costs, therefore, no changes were made as a result of these comments. ACF maintains the estimate provided in the NPRM that uses the best available information, which is a \$65 million estimate representing an average of five recent SACWIS implementations for mid-to-large sized states. As we explained in the NPRM, we expect actual CCWIS costs to be lower than this S/TACWIS-based estimate because CCWIS has fewer functional requirements than SACWIS, and therefore title IV–E agencies may build a new CCWIS at a lower cost. Also, CCWIS requirements permit title IV–E agencies to use less expensive commercial-off-the-shelf software (COTS) as CCWIS modules, and the requirement to build CCWIS with reusable modules reduces overall costs as newer projects benefit from software modules shared by mature CCWIS projects. Finally, we anticipate lower tribal costs as most tribes serve smaller populations with fewer workers than states.

Another commenter noted that costs would also be higher because states with existing systems will need either to start over or make extensive revisions to their existing systems to qualify for federal funding. However, we disagree that states will need to make extensive revisions to their existing systems to qualify for federal funding. As we noted in our response in section IV under § 1355.56(b), a S/TACWIS that is compliant with the S/TACWIS requirements may be able to achieve CCWIS compliance by developing the new bi-directional data exchanges required by § 1355.52(e) and documenting data quality procedures in the data quality plan required by § 1355.52(d)(5).

*Alternatives Considered:* We considered alternatives to the approach described in this rule. As discussed in the NPRM, we determined that alternative approaches such as: (1) Leaving the current rules in place; or (2) providing even greater flexibility than what we proposed in the NPRM, would not adequately improve the administration of the programs under titles IV–B and IV–E of the Act and improve overall outcomes for the children and families served by title IV–E agencies. We received no comments on the alternatives we considered, and therefore made no changes in this rule.

### *Regulatory Flexibility Analysis*

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory

Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact of this rule is on state and tribal governments, which are not considered small entities under the Act.

### *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act (Public Law 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation). That threshold level is currently approximately \$151 million. CCWIS is an option for states and tribes, therefore the Department has determined that this rule does not impose any mandates on state, local, or tribal governments, or the private sector that will result in an annual expenditure of \$151 million or more.

### *Paperwork Reduction Act*

Under the Paperwork Reduction Act (44 U.S.C. Ch. 35, as amended) (PRA), all Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or rule. Collection of APD information for S/TACWIS projects is currently authorized under OMB number 0970–0417 and will be applicable to CCWIS projects. This rule does not make a substantial change to those APD information collection requirements; however, it contains new information collection activities, including submission of an automated function list, data quality plan and Notice of Intent if applicable, which are subject to review.

### *Burden Hour Estimate*

As a result of the new information collection activities in this rule, we estimated the reporting burden, over and above what title IV–E agencies already do for the APD information collection requirements, as follows: (1) 550 hours for the automated function list requirement; (2) 2,200 hours for the first submission of the data quality plan; and (3) 80 hours for the one-time Notice of Intent submission by states and tribes not submitting an APD. The following are estimates:

Collection	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours
Automated Function List § 1355.52(i)(1)(ii) and (iii) and (i)(2) .....	55	1	10	550
Data Quality Plan § 1355.52(d)(5) (first submission) .....	55	1	40	2,200
Notice of Intent § 1355.52.(i)(1) (one-time submission) .....	12	1	8	96
One-time Total .....				2,296
Annual Total .....				550

We considered comments by the public regarding the burden hour estimate for providing a list of automated functions, a data quality plan, and an APD or Notice of Intent associated with the requirements we propose in § 1355.52(i)(1)(ii) and (iii) and (i)(2)(i) and (ii). Many of the comments regarding burden hours are discussed in section IV of the preamble. As discussed there, we did not make changes to the burden hour estimate above as a result of public comments.

**Total Burden Cost**

Based on the estimated burden hours, we developed an estimate of the associated cost for states and tribes to conduct these activities, as applicable. We made one change from the NPRM in this rule to double the mean hourly wage estimate for the job role of Management Analyst (13–111) from \$43.26 to \$86.52 ( $\$43.26 \times 2 = \$86.52$ ) in order to ensure we took into account overhead costs associated with labor costs. Therefore, the Data Quality Plan and Notice of Intent represent a one-time cost of \$198,649 (2,296 hours ×

\$86.52 hourly cost = \$198,649). We estimate that the average annual burden increase of 550 hours for the Automated Function List will cost \$47,586 (550 hours × \$86.52 hourly cost = \$47,586). Dividing these costs by the number of estimated respondents, ACF estimated the average cost per title IV–E agency to be \$2,965 one-time and \$865 annually. Federal reimbursement under title IV–E will be available for a portion of the costs that title IV–E agencies will incur as a result of this rule, depending on each agency’s cost allocation plan, information system, and other factors. The following are estimates:

	Hours	Average hourly labor rate	Total cost nationwide	Number of respondents	Net average cost per respondent
Total One-Time Burden Data Quality Plan and Notice of Intent.	2,296	\$86.52	\$198,650	67	\$2,965 One-Time.
Total Annual Automated Function List .....	550	\$86.52	\$47,586	55	\$865 Annually.

We considered comments by the public regarding the total burden cost estimate for providing a list of automated functions, a data quality plan, and an APD or Notice of Intent associated with the requirements we propose in § 1355.52(i)(1)(ii) and (iii) and (i)(2)(i) and (ii). Many of the comments regarding the cost of specific provisions are discussed in section IV of the preamble. However, in response to a commenter that estimated that the annual cost would be much higher than the \$23,793 figure provided in the impact statement, we would like to clarify that \$23,793 is the annual estimate for all of the 55 title IV–E agencies collectively to provide only their automated function list to ACF, per § 1355.52(i)(1)(ii) and (iii) and (i)(2). As discussed both in section IV and below, we did not make changes to the burden hour estimate above as a result of public comments.

*Congressional Review*

This rule is not a major rule as defined in the Congressional Review Act or CRA (5 U.S.C. Ch. 8). The CRA defines a major rule as one that has

resulted in or is likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. HHS has determined that this final rule does not meet any of these criteria.

*Assessment of the Impact on Family Well-Being*

Section 654 of the Treasury and General Government Appropriations Act, 2000 (Public Law 106–58) requires federal agencies to determine whether a proposed policy or rule may affect family well-being. If the agency’s determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This rule will not

have an impact on family well-being as defined in the law.

*Executive Order 13132*

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. We did not receive any public comments.

*Tribal Consultation Statement*

A full summary of the tribal consultation on child welfare automation, conducted on February 15 and 16, 2012 can be found at <https://www.acf.hhs.gov/programs/cb/resource/tribal-consultation-on-title-iv-e-information-systems-regulations>.

After publication of the NPRM, ACF held an information conference call for tribal stakeholders on August 27, 2015. We received no written comments from Indian tribes, tribal consortia or tribal organizations in response to the NPRM.



**List of Subjects***45 CFR Part 95*

Automatic data processing equipment and services—conditions for federal financial participation (FFP).

*45 CFR Part 1355*

Adoption and foster care, Child welfare, Data collection, Definitions grant programs—social programs.

*45 CFR Part 1356*

Administrative costs, Adoption and foster care, Child welfare, Fiscal requirements (title IV–E), Grant programs—social programs, Statewide information systems.

Dated: March 9, 2016.

**Mark H. Greenberg,**

*Acting Assistant Secretary for Children and Families.*

**Approved: April 27, 2016.**

*Sylvia M. Burwell, Secretary.*

For the reasons set out in the preamble, HHS and the Administration for Children and Families amend 45 CFR chapters I and XIII as follows:

**PART 95—GENERAL  
ADMINISTRATION—GRANT  
PROGRAMS (PUBLIC ASSISTANCE,  
MEDICAL ASSISTANCE AND STATE  
CHILDREN'S HEALTH INSURANCE  
PROGRAMS)**

■ 1. The authority citation for part 95 continues to read as follows:

**Authority:** 5 U.S.C. 301, 42 U.S.C. 622(b), 629b(a), 652(d), 654A, 671(a), 1302, and 1396a(a).

■ 2. Amend § 95.610 by revising paragraph (b)(12) to read as follows:

**§ 95.610 Submission of advance planning documents.**

\* \* \* \* \*

(b) \* \* \*

(12) Additional requirements, for acquisitions for which the State is requesting enhanced funding, as contained at § 307.15 and 42 CFR subchapter C, part 433 or funding for title IV–E agencies as contained at § 1355.52(i) of this title.

\* \* \* \* \*

■ 3. Amend § 95.612 by revising the last sentence to read as follows:

**§ 95.612 Disallowance of Federal Financial Participation (FFP).**

\* \* \* In the case of a suspension of the approval of an APD for a Comprehensive Child Welfare Information System (CCWIS) project and, if applicable the transitional project that preceded it, *see* § 1355.58 of this title.

■ 4. Amend § 95.625 by revising paragraph (a) and the last sentence of paragraph (b) to read as follows:

**§ 95.625 Increased FFP for certain ADP systems.**

(a) *General.* FFP is available at enhanced matching rates for the development of individual or integrated systems and the associated computer equipment that support the administration of state plans for titles IV–D and/or XIX provided the systems meet the specifically applicable provisions referenced in paragraph (b) of the section.

(b) \* \* \* The applicable regulations for the title IV–D program are contained in 45 CFR part 307. The applicable regulations for the title XIX program are contained in 42 CFR part 433, subpart C.

**CHAPTER XIII—ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES**

■ 5. Under the authority of 42 U.S.C. 1302(a), the heading for 45 CFR chapter XIII is revised to read as set forth above.

**PART 1355—GENERAL**

■ 6. The authority citation for part 1355 continues to read as follows:

**Authority:** 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 1301 and 1302.

■ 7. Revise § 1355.50 to read as follows:

**§ 1355.50 Purpose.**

Sections 1355.50 through 1355.59 contain the requirements a title IV–E agency must meet to receive Federal financial participation authorized under sections 474(a)(3)(C) and (D), and 474(c) of the Act for the planning, design, development, installation, operation, and maintenance of a comprehensive child welfare information system.

■ 8. Add § 1355.51 to read as follows:

**§ 1355.51 Definitions applicable to Comprehensive Child Welfare Information Systems (CCWIS).**

(a) The following terms as they appear in §§ 1355.50 through 1355.59 are defined as follows—

*Approved activity* means a project task that supports planning, designing, developing, installing, operating, or maintaining a CCWIS.

*Automated function* means a computerized process or collection of related processes to achieve a purpose or goal.

*Child welfare contributing agency* means a public or private entity that, by contract or agreement with the title IV–E agency, provides child abuse and neglect investigations, placement, or

child welfare case management (or any combination of these) to children and families.

*Data exchange* means the automated, electronic submission or receipt of information, or both, between two automated data processing systems.

*Data exchange standard* means the common data definitions, data formats, data values, and other guidelines that the state's or tribe's automated data processing systems follow when exchanging data.

*New CCWIS project* means a project to build an automated data processing system meeting all requirements in § 1355.52 and all automated functions meet the requirements in § 1355.53(a).

*Non-S/TACWIS project* means an active automated data processing system or project that, prior to the effective date of these regulations, ACF had not classified as a S/TACWIS and for which:

(i) ACF approved a development procurement; or

(ii) The applicable state or tribal agency approved a development procurement below the thresholds of 45 CFR 95.611(a); or

(iii) The operational automated data processing system provided the data for at least one AFCARS or NYTD file for submission to the federal system or systems designated by ACF to receive the report.

*Notice of intent* means a record from the title IV–E agency, signed by the governor, tribal leader, or designated state or tribal official and provided to ACF declaring that the title IV–E agency plans to build a CCWIS project that is below the APD approval thresholds of 45 CFR 95.611(a).

*S/TACWIS project* means an active automated data processing system or project that, prior to the effective date of these regulations, ACF classified as a S/TACWIS and for which:

(i) ACF approved a procurement to develop a S/TACWIS; or

(ii) The applicable state or tribal agency approved a development procurement for a S/TACWIS below the thresholds of 45 CFR 95.611(a).

*Transition period* means the 24 months after the effective date of these regulations.

(b) Other terms as they appear in §§ 1355.50 through 1355.59 are defined in 45 CFR 95.605.

■ 9. Revise § 1355.52 to read as follows:

**§ 1355.52 CCWIS project requirements.**

(a) *Efficient, economical, and effective requirement.* The title IV–E agency's CCWIS must support the efficient, economical, and effective administration of the title IV–B and IV–

E plans pursuant to section 474(a)(3)(C)(iv) of the Act by:

(1) Improving program management and administration by maintaining all program data required by federal, state or tribal law or policy;

(2) Appropriately applying information technology;

(3) Not requiring duplicative application system development or software maintenance; and

(4) Ensuring costs are reasonable, appropriate, and beneficial.

(b) *CCWIS data requirements.* The title IV–E agency’s CCWIS must maintain:

(1) Title IV–B and title IV–E data that supports the efficient, effective, and economical administration of the programs including:

(i) Data required for ongoing federal child welfare reports;

(ii) Data required for title IV–E eligibility determinations, authorizations of services, and expenditures under IV–B and IV–E;

(iii) Data to support federal child welfare laws, regulations, and policies; and

(iv) Case management data to support federal audits, reviews, and other monitoring activities;

(2) Data to support state or tribal child welfare laws, regulations, policies, practices, reporting requirements, audits, program evaluations, and reviews;

(3) For states, data to support specific measures taken to comply with the requirements in section 422(b)(9) of the Act regarding the state’s compliance with the Indian Child Welfare Act; and

(4) For each state, data for the National Child Abuse and Neglect Data System.

(c) *Reporting requirements.* The title IV–E agency’s CCWIS must use the data described in paragraph (b) of this section to:

(1) Generate, or contribute to, required title IV–B or IV–E federal reports according to applicable formatting and submission requirements; and

(2) Generate, or contribute to, reports needed by state or tribal child welfare laws, regulations, policies, practices, reporting requirements, audits, and reviews that support programs and services described in title IV–B and title IV–E.

(d) *Data quality requirements.* (1) The CCWIS data described in paragraph (b) of this section must:

(i) Meet the most rigorous of the applicable federal, and state or tribal standards for completeness, timeliness, and accuracy;

(ii) Be consistently and uniformly collected by CCWIS and, if applicable,

child welfare contributing agency systems;

(iii) Be exchanged and maintained in accordance with confidentiality requirements in section 471(a)(8) of the Act, and 45 CFR 205.50, and 42 U.S.C. 5106a(b)(2)(B)(viii) through (x) of the Child Abuse Prevention and Treatment Act, if applicable, and other applicable federal and state or tribal laws;

(iv) Support child welfare policies, goals, and practices; and

(v) Not be created by default or inappropriately assigned.

(2) The title IV–E agency must implement and maintain automated functions in CCWIS to:

(i) Regularly monitor CCWIS data quality;

(ii) Alert staff to collect, update, correct, and enter CCWIS data;

(iii) Send electronic requests to child welfare contributing agency systems to submit current and historical CCWIS data to the CCWIS;

(iv) Prevent, to the extent practicable, the need to re-enter data already captured or exchanged with the CCWIS; and

(v) Generate reports of continuing or unresolved CCWIS data quality problems.

(3) The title IV–E agency must conduct biennial data quality reviews to:

(i) Determine if the title IV–E agency and, if applicable, child welfare contributing agencies, meet the requirements of paragraphs (b), (d)(1), and (d)(2) of this section; and

(ii) Confirm that the bi-directional data exchanges meet the requirements of paragraphs (e) and (f) of this section, and other applicable ACF regulations and policies.

(4) The title IV–E agency must enhance CCWIS or the electronic bi-directional data exchanges or both to correct any findings from reviews described at paragraph (d)(3) of this section.

(5) The title IV–E agency must develop, implement, and maintain a CCWIS data quality plan in a manner prescribed by ACF and include it as part of Annual or Operational APDs submitted to ACF as required in 45 CFR 95.610. The CCWIS data quality plan must:

(i) Describe the comprehensive strategy to promote data quality including the steps to meet the requirements at paragraphs (d)(1) through (3) of this section; and

(ii) Report the status of compliance with paragraph (d)(1) of this section.

(e) *Bi-directional data exchanges.* (1) The CCWIS must support efficient, economical, and effective bi-directional

data exchanges to exchange relevant data with:

(i) Systems generating the financial payments and claims for titles IV–B and IV–E per paragraph (b)(1)(ii) of this section, if applicable;

(ii) Systems operated by child welfare contributing agencies that are collecting or using data described in paragraph (b) of this section, if applicable;

(iii) Each system used to calculate one or more components of title IV–E eligibility determinations per paragraph (b)(1)(ii) of this section, if applicable; and

(iv) Each system external to CCWIS used by title IV–E agency staff to collect CCWIS data, if applicable.

(2) To the extent practicable, the title IV–E agency’s CCWIS must support one bi-directional data exchange to exchange relevant data, including data that may benefit IV–E agencies and data exchange partners in serving clients and improving outcomes, with each of the following state or tribal systems:

(i) Child abuse and neglect system(s);

(ii) System(s) operated under title IV–A of the Act;

(iii) Systems operated under title XIX of the Act including:

(A) Systems to determine Medicaid eligibility described in 42 CFR 433.111(b)(2)(ii)(A); and

(B) Medicaid Management Information Systems as defined at 42 CFR 433.111(b)(2)(ii)(B);

(iv) Systems operated under title IV–D of the Act;

(v) Systems operated by the court(s) of competent jurisdiction over title IV–E foster care, adoption, and guardianship programs;

(vi) Systems operated by the state or tribal education agency, or school districts, or both.

(f) *Data exchange standard requirements.* The title IV–E agency must use a single data exchange standard that describes data, definitions, formats, and other specifications upon implementing a CCWIS:

(1) For bi-directional data exchanges between CCWIS and each child welfare contributing agency; and

(2) For data exchanges with systems described under paragraph (e)(1)(iv) of this section.

(g) *Automated eligibility determination requirements.* (1) A state title IV–E agency must use the same automated function or the same group of automated functions for all title IV–E eligibility determinations.

(2) A tribal title IV–E agency must, to the extent practicable, use the same automated function or the same group of automated functions for all title IV–E eligibility determinations.

(h) *Software provision requirement.* The title IV–E agency must provide a copy of the agency-owned software that is designed, developed, or installed with FFP and associated documentation to the designated federal repository within the Department upon request.

(i) *Submission requirements.* (1) Before claiming funding in accordance with a CCWIS cost allocation, a title IV–E agency must submit an APD or, if below the APD submission thresholds defined at 45 CFR 95.611, a Notice of Intent that includes:

(i) A description of how the CCWIS will meet the requirements in paragraphs (a) through (h) of this section and, if applicable § 1355.54;

(ii) A list of all automated functions included in the CCWIS; and

(iii) A notation of whether each automated function listed in paragraph (i)(1)(ii) of this section meets, or when implemented will meet, the following requirements:

(A) The automated function supports at least one requirement of this section or, if applicable § 1355.54;

(B) The automated function is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function; and

(C) The automated function complies with the CCWIS design requirements described under § 1355.53(a), unless exempted in accordance with § 1355.53(b).

(2) Annual APD Updates and Operational APDs for CCWIS projects must include:

(i) An updated list of all automated functions included in the CCWIS;

(ii) A notation of whether each automated function listed in paragraph (i)(2)(i) of this section meets the requirements of paragraph (i)(1)(iii)(B) of this section; and

(iii) A description of changes to the scope or the design criteria described at § 1355.53(a) for any automated function listed in paragraph (i)(2)(i) of this section.

(j) *Other applicable requirements.* Regulations at 45 CFR 95.613 through 95.621 and 95.626 through 95.641 are applicable to all CCWIS projects below the APD submission thresholds at 45 CFR 95.611.

■ 10. Revise § 1355.53 to read as follows:

**§ 1355.53 CCWIS design requirements.**

(a) Except as exempted in paragraph (b) of this section, automated functions contained in a CCWIS must:

(1) Follow a modular design that includes the separation of business rules from core programming;

(2) Be documented using plain language;

(3) Adhere to a state, tribal, or industry defined standard that promotes efficient, economical, and effective development of automated functions and produces reliable systems; and

(4) Be capable of being shared, leveraged, and reused as a separate component within and among states and tribes.

(b) CCWIS automated functions may be exempt from one or more of the requirements in paragraph (a) of this section if:

(1) The CCWIS project meets the requirements of § 1355.56(b) or (f)(1); or

(2) ACF approves, on a case-by-case basis, an alternative design proposed by a title IV–E agency that is determined by ACF to be more efficient, economical, and effective than what is found in paragraph (a) of this section.

■ 11. Revise § 1355.54 to read as follows:

**§ 1355.54 CCWIS options.**

If a project meets, or when completed will meet, the requirements of § 1355.52, then ACF may approve CCWIS funding described at § 1355.57 for other ACF-approved data exchanges or automated functions that are necessary to achieve title IV–E or IV–B programs goals.

■ 12. Revise § 1355.55 to read as follows:

**§ 1355.55 Review and assessment of CCWIS projects.**

ACF will review, assess, and inspect the planning, design, development, installation, operation, and maintenance of each CCWIS project on a continuing basis, in accordance with APD requirements in 45 CFR part 95, subpart F, to determine the extent to which the project meets the requirements in §§ 1355.52, 1355.53, 1355.56, and, if applicable, § 1355.54.

■ 13. Revise § 1355.56 to read as follows:

**§ 1355.56 Requirements for S/TACWIS and non-S/TACWIS projects during and after the transition period.**

(a) During the transition period a title IV–E agency with a S/TACWIS project may continue to claim title IV–E funding according to the cost allocation methodology approved by ACF for development or the operational cost allocation plan approved by the Department, or both.

(b) A S/TACWIS project must meet the submission requirements of

§ 1355.52(i)(1) during the transition period to qualify for the CCWIS cost allocation methodology described in § 1355.57(a) after the transition period.

(c) A title IV–E agency with a S/TACWIS may request approval to initiate a new CCWIS and qualify for the CCWIS cost allocation methodology described in § 1355.57(b) by meeting the submission requirements of § 1355.52(i)(1).

(d) A title IV–E agency that elects not to transition a S/TACWIS project to a CCWIS project must:

(1) Notify ACF in an APD or Notice of Intent submitted during the transition period of this election; and

(2) Continue to use the S/TACWIS through its life expectancy in accordance with 45 CFR 95.619.

(e) A title IV–E agency that elects not to transition its S/TACWIS project to a CCWIS and fails to meet the requirements of paragraph (d) of this section is subject to funding recoupment described under § 1355.58(d).

(f) A title IV–E agency with a non-S/TACWIS (as defined in § 1355.51) that elects to build a CCWIS or transition to a CCWIS must meet the submission requirements of § 1355.52(i)(1):

(1) During the transition period to qualify for a CCWIS cost allocation as described at § 1355.57(a); or

(2) At any time to request approval to initiate a new CCWIS and qualify for a CCWIS cost allocation as described at § 1355.57(b).

■ 14. Revise § 1355.57 to read as follows:

**§ 1355.57 Cost allocation for CCWIS projects.**

(a) *CCWIS cost allocation for projects transitioning to CCWIS.* (1) All automated functions developed after the transition period for projects meeting the requirements of § 1355.56(b) or § 1355.56(f)(1) must meet the CCWIS design requirements described under § 1355.53(a), unless exempted by § 1355.53(b)(2).

(2) The Department may approve the applicable CCWIS cost allocation for an automated function of a project transitioning to a CCWIS if the automated function:

(i) Supports programs authorized under titles IV–B or IV–E, and at least one requirement of § 1355.52 or, if applicable § 1355.54; and

(ii) Is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function.

(b) *CCWIS cost allocation for new CCWIS projects.* (1) Unless exempted in

accordance with § 1355.53(b)(2), all automated functions of a new CCWIS project must meet the CCWIS design requirements described under § 1355.53(a).

(2) An automated function of a CCWIS project described in paragraph (b)(1) of this section may qualify for a CCWIS cost allocation if the automated function:

(i) Supports programs authorized under titles IV–B or IV–E, and at least one requirement of § 1355.52 or, if applicable § 1355.54; and

(ii) Is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function.

(c) *CCWIS cost allocation for approved activities.* The Department may approve a CCWIS cost allocation for an approved activity for a CCWIS project meeting the requirements of paragraph (a) or (b) of this section.

(d) *Project cost allocation.* A title IV–E agency must allocate project costs in accordance with applicable HHS regulations and other guidance.

(e) *CCWIS cost allocation.* (1) A title IV–E agency may allocate CCWIS development and operational costs to title IV–E for the share of approved activities and automated functions that:

(i) Are approved by the Department;

(ii) Meet the requirements of paragraphs (a), (b), or (c) of this section; and

(iii) Benefit federal, state or tribal funded participants in programs and

allowable activities described in title IV–E of the Act to the title IV–E program.

(2) A title IV–E agency may also allocate CCWIS development costs to title IV–E for the share of system approved activities and automated functions that meet requirements (e)(1)(i) and (ii) of this section and:

(i) Benefit title IV–B programs; or

(ii) Benefit both title IV–E and child welfare related programs.

(f) *Non-CCWIS cost allocation.* Title IV–E costs not previously described in this section may be charged to title IV–E in accordance with § 1356.60(d).

■ 15. Add § 1355.58 to read as follows:

**§ 1355.58 Failure to meet the conditions of the approved APD.**

(a) In accordance with 45 CFR 75.371 through 75.375 and 45 CFR 95.635, ACF may suspend title IV–B and title IV–E funding approved in the APD for a CCWIS if ACF determines that the title IV–E agency fails to comply with APD requirements in 45 CFR part 95, subpart F, or meet the requirements at § 1355.52 or, if applicable, § 1355.53, § 1355.54, or § 1355.56.

(b) Suspension of CCWIS funding begins on the date that ACF determines the title IV–E agency failed to:

(1) Comply with APD requirements in 45 CFR part 95, subpart F; or

(2) Meet the requirements at § 1355.52 or, if applicable, § 1355.53, § 1355.54, or § 1355.56 and has not corrected the failed requirements according to the time frame in the approved APD.

(c) The suspension will remain in effect until the date that ACF:

(1) Determines that the title IV–E agency complies with 45 CFR part 95, subpart F; or

(2) Approves a plan to change the application to meet the requirements at § 1355.52 and, if applicable, § 1355.53, § 1355.54, or § 1355.56.

(d) If ACF suspends an APD, or the title IV–E agency voluntarily ceases the design, development, installation, operation, or maintenance of an approved CCWIS, ACF may recoup all title IV–E funds claimed for the CCWIS project.

■ 16. Add reserved § 1355.59.

**§ 1355.59 [Reserved]**

**PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E**

■ 17. The authority citation for part 1356 continues to read as follows:

**Authority:** 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 1302.

■ 18. Amend § 1356.60 by revising paragraph (e) to read as follows:

**§ 1356.60 Fiscal requirements (title IV–E).**

\* \* \* \* \*

(e) *Federal matching funds for CCWIS and Non-CCWIS.* Federal matching funds are available at the rate of fifty percent (50%). Requirements for the cost allocation of CCWIS and non-CCWIS project costs are at § 1355.57 of this chapter.

[FR Doc. 2016–12509 Filed 5–26–16; 8:45 am]

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Part III

## Department of Transportation

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Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, et al.

Hazardous Materials: Miscellaneous Amendments (RRR); Final Rule

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Parts 107, 171, 172, 173, 175, 176, 177, 178, 179, and 180**

[Docket No. PHMSA–2013–0225 (HM–218H)]

RIN 2137–AF04

**Hazardous Materials: Miscellaneous Amendments (RRR)**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Pipeline and Hazardous Materials Safety Administration (PHMSA) is amending the Hazardous Materials Regulations (HMR) to make miscellaneous amendments in order to update and clarify certain regulatory requirements. These amendments are designed to promote safer transportation practices, address petitions for rulemaking, respond to National Transportation Safety Board (NTSB) Safety Recommendations, facilitate international commerce, make editorial corrections, and simplify the regulations. The amendments in this rulemaking include, but are not limited to, removing the packing group (PG) II designation for certain organic peroxides, self-reactive substances, and explosives; incorporating requirements for trailers of manifolded acetylene cylinders; providing requirements to

allow for shipments of damaged wet electric batteries; and revising the requirements for the packaging of nitric acid, testing of pressure relief devices on cargo tanks, and shipments of black or smokeless powder for small arms.

**DATES:**

*Effective Date:* This rule is effective July 5, 2016.

*Voluntary Compliance Date:* Voluntary compliance with all amendments is authorized June 2, 2016.

*Incorporation by reference Date:* The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of July 5, 2016.

**FOR FURTHER INFORMATION CONTACT:**

Aaron Wiener or Michael Ciccarone, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

On January 23, 2015, PHMSA published a notice of proposed rulemaking (NPRM) [Docket No. PHMSA–2013–0225 (HM–218H); 80 FR 3787] that proposed amendments to update and clarify existing requirements of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). Both the NPRM and this final rule are part of the Department of Transportation’s Retrospective Regulatory Review (RRR) process designed to identify ways to improve the HMR through the extensive review of both the HMR and previously issued letters of interpretation. In addition, the NPRM proposed regulatory requirements in response to seven (7) petitions for rulemaking and two (2) NTSB Safety Recommendations. The changes proposed in the NPRM are summarized below:

*Petitions for Rulemaking*

The following table provides a brief summary of the petitions addressed in the NPRM and the affected sections. These petitions are included in the docket for this proceeding:

Petition	Petitioner	Summary and affected section(s)
P–1590	Dangerous Goods Advisory Council (DGAC).	Remove the packing group (PG) II designation for certain organic peroxides, self-reactive substances, and explosives in the § 172.101 Hazardous Materials Table (HMT).
P–1591	Air Products and Chemicals, Inc	Amend the marking requirements for poisonous-by-inhalation shipments transported in accordance with the International Maritime Dangerous Goods (IMDG) Code or Transport Canada’s Transport of Dangerous Goods (TDG) Regulations (§ 171.23).
P–1597	DGAC	Require that emergency response telephone numbers be displayed on shipping papers numerically (§ 172.604).
P–1601	United Parcel Service (UPS)	Amend the packaging instructions for certain shipments of nitric acid by requiring intermediate packaging for glass inner packagings (§ 173.158).
P–1604	National Propane Gas Association (NPGA).	Extend the pressure test and internal visual inspection test period to 10 years for certain MC 331 cargo tanks in dedicated propane delivery service (§ 180.407).
P–1605	Compressed Gas Association (CGA)	Incorporate by reference in § 171.7 CGA G–1.6–2011, <i>Standard for Mobile Acetylene Trailer Systems</i> , Seventh Edition, copyright 2011 (§§ 171.7 and 173.301).
P–1609	Truck Trailer Manufacturers Association (TTMA).	Clarify the requirements applicable to the testing of pressure relief devices for cargo tank motor vehicles (§ 180.407).

*NTSB Safety Recommendations*

The following table provides a brief summary of the NTSB recommendations

addressed in the NPRM and the affected sections. These recommendations are

included in the docket for this proceeding:

Recommendation	Summary and affected section
H-09-01 .....	Modify 49 CFR 173.301 to clearly require (1) that cylinders be securely mounted on mobile acetylene trailers and other trailers with manifolded cylinders to reduce the likelihood of cylinders being ejected during an accident and (2) that the cylinder valves, piping, and fittings be protected from multidirectional impact forces that are likely to occur during highway accidents, including rollovers.
H-09-02 .....	Require fail-safe equipment that ensures that operators of mobile acetylene trailers can perform unloading procedures only correctly and in sequence (§ 173.301).

#### Amendments Based on PHMSA Review

- Revise § 107.402(d)(1)(i) to replace the term “citizen” with the term “resident.”
- Revise § 107.402(e) to require that a (cigarette) lighter certification agency submits a statement that the agency is independent of and not owned by a lighter manufacturer, distributor, import or export company, or proprietorship.
- Revise § 107.402(f) to require portable tank and multi-element gas container (MEGC) certification agencies to submit a statement indicating that the agency is independent of and not owned by a portable tank or MEGC manufacturer, owner, or distributor.
- Revise § 107.807 to require a cylinder inspection agency to be independent of and not owned by a cylinder manufacturer, owner, or distributor.
- Remove the entry for CGA Pamphlet C-1.1 in Table 1 to § 171.7.
- Revise the § 172.101 HMT to add Special Provision B120 to Column (7) for the entry “Calcium nitrate, UN1454.”
- Revise the § 172.101 HMT to remove vessel stowage provision 24E from Column (10B) for the entry for “Propellant, solid, UN0501.”
- Revise the § 172.101 HMT entry for “Corrosive liquids, flammable, n.o.s., UN2920, PG II” for consistency with the United Nations (UN) Model Regulations, International Maritime Dangerous Goods (IMDG) Code, and the International Civil Aviation Organization Technical Instructions (ICAO TI) such that this entry is eligible for the limited quantity exceptions.
- Revise the § 172.101 HMT entry for “Oxidizing solid, corrosive, n.o.s., UN3085, PG II” for consistency with the UN Model Regulations, IMDG Code, and the ICAO TI such that this entry is eligible for the limited quantity exceptions.
- Revise the § 172.101 HMT entries for “Trinitrophenol (picric acid), wetted, with not less than 10 percent water by mass, UN3364” and “Trinitrophenol, wetted with not less than 30 percent water, by mass, UN1344” to harmonize the HMR with the UN Model Regulations, IMDG Code, and the ICAO TI to clarify that the 500

gram limit per package does not apply to UN1344 but does apply to UN3364.

- Revise § 172.102, Special Provision 136 assigned to the proper shipping name “Dangerous goods in machinery or apparatus, UN3363” to include reference to subpart G of part 173.
- Remove reference to obsolete Special Provision 18 for the § 172.101 HMT entry “Fire extinguishers, UN1044” and in § 180.209(j) and provide correct cross reference to § 173.309.
- Correct a reference in § 172.201 to exceptions for the requirement to provide an emergency response telephone number on a shipping paper.
- Revise §§ 172.301(f), 172.326(d), and 172.328(e) to include the clarification that the “NOT-ODORIZED” or “NON-ODORIZED” marking may appear on packagings used for both non-odorized and odorized liquefied petroleum gas (LPG) and remove the effective date of October 1, 2006 or “after September 30, 2006,” if it appears in these paragraphs, as the effective date has passed.
- Amend § 172.406(d) by clearly authorizing the use of labels described in part 172, Subpart E with a dotted or solid line outer border on a surface background of contrasting color.
- Update a mailing address in § 172.407(d)(4)(ii).
- Clarify the § 172.514(c) marking size requirements for an intermediate bulk container (IBC) that is labeled instead of placarded by replacing the bulk package marking reference with the non-bulk marking reference, specifically § 172.301(a)(1).
- Revise § 173.4a(a) to clarify that articles (including aerosols) are not eligible for excepted quantity reclassification under § 173.4a, although some are eligible to be shipped as small quantities by highway and rail in § 173.4.
- Clarify that the § 173.24a(c)(1)(iv) requirements do not apply to limited quantities packaged in accordance with § 173.27(f)(2).
- Clarify the § 173.27(f)(2) quantity limits for mixed contents packages.
- Clarify the requirements applicable to bulk transportation of combustible liquids by adding a new subparagraph § 173.150(f)(3)(xi) stating that the

registration requirements in subpart G of part 107 are applicable and revising § 173.150(f)(3)(ix) and (x) for punctuation applicable to a listing of requirements.

- Add a new paragraph (k) in § 173.159 to allow shippers to prepare for transport and offer into transportation damaged wet electric storage batteries.
- Revise § 173.166(e)(6) to add the words “or cargo vessel.”
- Revise §§ 173.170 and 173.171 by changing the term “motor vehicle” to “transport vehicle” to allow for motor vehicles comprised of more than one cargo-carrying body to carry 100 pounds of black or smokeless powder reclassified as Division 4.1 in each cargo-carrying body instead of 100 pounds total in the motor vehicle.
- Revise § 173.199(a)(4) by removing the reference to the steel rod impact test in § 178.609(h).
- Clarify the § 173.225 Packing Method table for organic peroxide materials.
- Amend the § 172.101 HMT bulk packaging section reference in Column (8C) from § 173.240 to § 173.216 for the entries “Asbestos, NA2212,” “Asbestos, amphibole *amosite*, *tremolite*, *actinolite*, *anthophyllite*, or *crocidolite*, UN2212,” and “Asbestos, chrysotile, UN2590.” In addition, we proposed to revise paragraph (c)(1) in § 173.216 by authorizing the use of bulk packages prescribed in § 173.240.
- Add a new paragraph (h) to § 173.314 to require odorization of liquefied petroleum gas when contained in rail cars and revise § 173.315(b)(1) to address odorant fade and under-odorization in certain cargo tanks.
- Amend § 173.306(k)(1) to clarify that aerosols shipped for recycling or disposal by motor vehicle containing a limited quantity are afforded the applicable exceptions provided for ORM-D materials granted under §§ 173.306(i) and 173.156(b).
- Create a new paragraph (d) in § 175.1 stating that the HMR does not apply to dedicated air ambulance, firefighting, or search and rescue operations.



- Correct § 175.8 by adding the appropriate 14 CFR part 125 citations.
- Clarify the § 175.10 exceptions for passengers, crewmembers, and air operators in paragraphs (a)(18), (22), and (24) for the carriage of hazardous materials aboard a passenger aircraft.
- Clarify § 175.75(e)(2) by replacing the word “located” with “certificated.”
- Clarify § 176.30(a)(4) by replacing the word “packaging” with “package.”
- Clarify that the loading restrictions in § 177.835(c)(1) through (4) are applicable to § 177.848(e).
- Revise § 178.65(i)(1) to correctly reference the manufacturer’s report requirements in § 178.35(g).
- Clarify § 178.337–17(a) to eliminate confusion of the name plate and specification plate requirements.

- Correct an editorial error in the formula in § 178.345–3(c)(1).
- Include provisions consistent with the non-bulk packaging and IBC approval provisions for Large Packagings in § 178.955.
- Clarify the requirements for Federal Railroad Administration (FRA) approval of tank car designs in § 179.13.

**II. Incorporation by Reference Discussion Under 1 CFR Part 51**

The CGA G–1.6–2011, *Standard for Mobile Acetylene Trailer Systems, Seventh Edition, copyright 2011* and the AAR *Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, (AAR Specifications for Tank Cars), December 2000* are available for interested parties

to purchase in either print or electronic versions through the parent organization Web sites. The price charged helps to cover the cost of developing, maintaining, hosting, and accessing these standards. The specific standards are discussed in greater detail in the Comment Discussion (*Mobile Acetylene Trailer Systems (P–1605) and NTSB Safety Recommendations H–09–01 and H–09–02*) and Section-by-Section Review of § 171.7.

**III. Comment Discussion**

In response to PHMSA’s January 23, 2015 NPRM [80 FR 3787], PHMSA received comments from the following organizations and individuals (we include the referenced docket number in numerical order for each comment):

Commenter	Docket ID No.
Anonymous	PHMSA–2013–0225–0013
Aaron Adamczyk	PHMSA–2013–0225–0014
Girard Equipment, Inc	PHMSA–2013–0225–0019
Truck Trailer Manufacturers Association (TTMA)	PHMSA–2013–0225–0020, PHMSA–2013–0225–0068
Peter Weis	PHMSA–2013–0225–0021
Massachusetts Department of Fire Services	PHMSA–2013–0225–0022
Air Products and Chemicals, Inc	PHMSA–2013–0225–0023
National Association of State Fire Marshalls (NASFM)	PHMSA–2013–0225–0024 PHMSA–2013–0225–0029
Paul Berland	PHMSA–2013–0225–0025
Adrian Mendoza	PHMSA–2013–0225–0026
Mary Shesgreen	PHMSA–2013–0225–0027
Betts Industries, Inc	PHMSA–2013–0225–0028
New Hampshire Office of the State Fire Marshall	PHMSA–2013–0225–0030
Shelley Brown	PHMSA–2013–0225–0031
Mary M Lane	PHMSA–2013–0225–0032
American Trucking Associations (ATA)	PHMSA–2013–0225–0033
National Transportation Safety Board (NTSB)	PHMSA–2013–0225–0034
URS Corporation	PHMSA–2013–0225–0035
The Compressed Gas Association (CGA)	PHMSA–2013–0225–0036, PHMSA–2013–0225–0052
Marnelle Curtis	PHMSA–2013–0225–0037
Frack Free Illinois	PHMSA–2013–0225–0038
Battery Council International (BCI)	PHMSA–2013–0225–0039
Riki Ott	PHMSA–2013–0225–0040
Anonymous	PHMSA–2013–0225–0041
Stephanie Bilenko	PHMSA–2013–0225–0042
Doug Ower	PHMSA–2013–0225–0043
Beverley	PHMSA–2013–0225–0044
Gloria Charland	PHMSA–2013–0225–0045
Institute of Makers of Explosives (IME)	PHMSA–2013–0225–0046
National Association of Chemical Distributors (NACD)	PHMSA–2013–0225–0047
Utility Solid Waste Activities Group (USWAG)	PHMSA–2013–0225–0048, PHMSA–2013–0225–0069
Public.Resource.Org, Greenpeace USA	PHMSA–2013–0225–0049
Chlorine Institute	PHMSA–2013–0225–0050
American Coatings Association (ACA)	PHMSA–2013–0225–0051
American Chemistry Council (ACC)	PHMSA–2013–0225–0053
International Association of Fire Chiefs (IAFC)	PHMSA–2013–0225–0054
Dangerous Goods Advisory Council (DGAC)	PHMSA–2013–0225–0055
Dow Chemical Company	PHMSA–2013–0225–0056
United Parcel Service (UPS)	PHMSA–2013–0225–0057
Veolia ES Technical Solutions, LLC (Veolia)	PHMSA–2013–0225–0058
Council on Safe Transportation of Hazardous Articles (COSTHA)	PHMSA–2013–0225–0059
James Scott	PHMSA–2013–0225–0060
National Propane Gas Association (NPGA)	PHMSA–2013–0225–0061
Anonymous	PHMSA–2013–0225–0062
Association of American Railroads (AAR)	PHMSA–2013–0225–0063
Harv Teitelbaum	PHMSA–2013–0225–0064

Commenter	Docket ID No.
Marvin Feil .....	PHMSA-2013-0225-0065
Reusable Industrial Packaging Association (RIPA) .....	PHMSA-2013-0225-0066
Jones Chemical, Inc .....	PHMSA-2013-0225-0067
Sporting Arms and Ammunition Manufacturers Institute, Inc. (SAAMI) .....	PHMSA-2013-0225-0070
Trammo, Inc .....	PHMSA-2013-0225-0073

A discussion of the comments and PHMSA's position regarding action in this final rule is provided below. We begin with a discussion of comments on the proposals to revise the HMR based on petitions for rulemaking and NTSB Safety Recommendations. Note that additional comments are addressed in the Section-by-Section Review. Further, we discuss comments and proposals not adopted under this final rule, later discussing comments that are outside the scope of the proposals of this rulemaking.

#### *A. Petitions for Rulemaking and NTSB Safety Recommendations*

##### *Amendments to the HMR for Organic Peroxides, Self-Reactive Substances and Explosives (P-1590)*

The DGAC submitted a petition (P-1590) requesting that PHMSA amend the HMR by removing the PG II designation in Column (5) of the § 172.101 HMT for all organic peroxides (Division 5.2), self-reactive substances (Division 4.1), and explosives (Class 1). The DGAC states that organic peroxides, self-reactive substances, and explosives are not assigned a packing group in accordance with either the HMR or international regulations. Despite the absence of regulatory language for determining a packing group assignment for these materials, proper shipping names for these materials listed in the HMT are assigned a default PG II. The DGAC asserts that the presence of a PG assignment for these entries is a constant source of confusion that leads to frustration of shipments, further indicating that the frustration typically occurs when shipping papers are inspected by carrier staff and enforcement personnel along the transport chain with respect to the § 172.202(a)(4) requirement to include the "packing group in Roman numerals, as designated for the hazardous material in Column (5) of the § 172.101 table."

The DGAC notes that while § 172.202(a)(4) also excepts organic peroxides, self-reactive substances, and explosives from the requirement to provide a PG as part of the required description, a great deal of confusion is created given that, irrespective of this exception, PGs are provided for these materials in the § 172.101 HMT.

Furthermore, the DGAC also states that the HMR are inconsistent with international regulations, as a PG is not indicated for these materials in their respective hazardous materials (dangerous goods) tables. In addition, those regulations restrict the provision of a PG in the transport document basic description to materials where a PG has been assigned in accordance with classification requirements: Thus, with no PG indicated for these substances in the respective lists, it is inappropriate to provide a PG in the hazardous materials description on a shipping paper under international regulations. Consequently, provision of a PG for domestic transportation would constitute a violation of international regulations for international transportation.

The DGAC states that removing the PG for these materials from the HMT would impose no additional costs and would, in fact, result in a net savings since many unnecessary delays in hazardous material shipments would be avoided. However, the DGAC did not provide a specific figure for the anticipated net savings.

The DGAC also states that the packaging provisions in Part 173 for these materials indicate the level of performance required. Therefore, although certain packagings must meet PG II performance levels, they do not indicate a degree of danger or the variation to PG I or PG III packagings.

In the NPRM, PHMSA proposed to remove the PG II designation from Column (5) of the HMT for organic peroxides (Division 5.2), self-reactive substances (Division 4.1), and explosives (Class 1) as requested in the petition. We agree with the petitioner that, when the PG does not relate to the degree of hazard of the material based on classification criteria but rather is broadly assigned to an entire group of materials for purposes of applying regulatory requirements, there is limited value in requiring an indication of the PG on a shipping paper. PHMSA solicited comment on the safety implications and net benefits of such a change and, as a result, received three comments from ACA, IME, and DGAC in support of the proposed revision. The ACA commented that international harmony is vitally important and will help maintain the exemplary safety

record for the transport of hazardous materials. In its comments, IME stated that in a letter to PHMSA dated June 20, 2012, it supported the petition submitted by DGAC, acknowledging that "IME has encountered enforcement officials' confusion over not showing the packing group on Class 1 shipping papers, as is allowed by regulation. Shipping paper violations can lead to out-of-service orders and have serious consequences to IME members' ability to operate as a motor carrier or hold special permits and approvals." IME noted that its "experience has not changed in the intervening time period, and we continue to support the position advocated by DGAC. We believe that the action being contemplated by PHMSA will eliminate the confusion that is engendered by the current default assignment." IME further commented that the removal of the PG II designation would not result in the incorrect packaging of Class 1 explosives in other than an approved package because of the § 173.60(a) requirement that a packaging used for Class 1 (explosives) materials must meet the PG II requirements. In addition to its supporting comments, IME requested that shippers who currently include the PG designation on shipping papers continue to be able to do so without risk of incurring a violation.

Taking into account the reasons for the removal of the PG II designation from Column (5) of the HMT for organic peroxides, self-reactive substances, and explosives, PHMSA disagrees with IME that shippers should be provided the option of electively indicating a PG on a shipping paper for a HMT entry that is no longer assigned a PG designation. PHMSA believes that allowing this practice would continue to perpetuate confusion and result in the continued frustration of shipments. Further, allowing a PG on a shipping paper for a HMT entry that is not assigned a PG designation for domestic transportation would not be in alignment with, and would continue to constitute a violation of, international regulations for international transportation. For these reasons, we are revising Column (5) of the HMT as proposed in the NPRM without an exception to voluntarily apply the PG II designation on a shipping paper.

### Marking Requirements for Poison-by-Inhalation Materials (P-1591)

Air Products and Chemicals, Inc. submitted a petition (P-1591) requesting that PHMSA amend the marking requirements for poison-by-inhalation hazard (PIH) materials that are shipped in accordance with the IMDG Code or Transport Canada's Transportation of Dangerous Goods (TDG) Regulations. Specifically, the petitioner requested that PHMSA modify § 171.23(b)(10)(iv)(A) and (B) to remove the phrase "regardless of the total quantity contained in the transport vehicle or freight container" in both paragraphs to align part 171, subpart C requirements for use of international regulations with the poisonous hazardous material marking requirements in § 172.313(c), which offers exceptions based on Hazard Zone, quantity, and number of distinct materials.

Subpart C of part 171 specifies requirements for shipments offered for transportation or transported in the United States under international regulations. For PIH material, subparagraphs (A) and (B) of § 171.23(b)(10)(iv) require that the transport vehicle or freight container must be marked with the identification numbers for the hazardous material, regardless of the total quantity contained in the transport vehicle or freight container, in the manner specified in § 172.313(c) [*i.e.*, the HMR] and placarded as required by subpart F of part 172. The petitioner stated that the phrase "regardless of the total quantity contained in the transport vehicle or freight container" gives the appearance that the identification number marking requirement is applicable to any quantity, the remainder of the sentence states that the marking must be "in the manner specified in § 172.313(c) of this subchapter," which provides an entirely different requirement.

Section 172.313(c) specifies marking requirements for non-bulk packages of PIH material contained in transport vehicles or freight containers subject to certain provisions and limitations. Section 172.313(c)(2) states, the transport vehicle or freight container is loaded at one facility with 1,000 kg (2,205 pounds) or more aggregate gross weight of the material in non-bulk packages marked with the same proper shipping name and identification number, meaning that unless this criteria is met, marking the identification number on the transport vehicle or freight container is not required. The petitioner indicated that

the inconsistency of §§ 171.23(b)(10)(iv)(A) and (B) and 172.313(c) is a source of confusion.

Air Products and Chemicals, Inc. also identified a potential discrepancy when transporting internationally to or from the United States in accordance with § 171.23, as the requirement to mark all quantities of PIH material is more restrictive and costly than the current marking requirements for the same materials when transported domestically under the HMR in accordance with § 172.313(c). The petitioner points out that under both the IMDG and the TDG there are no additional marking requirements for transport units carrying PIH materials in non-bulk packages similar to the provisions found in § 172.313(c). Therefore, for quantities of PIH materials in non-bulk packages (less than 1,000 kg per UN number), all three regulations are not aligned.

The petitioner states that it has had numerous shipments of PIH materials frustrated because of this confusing requirement and that the additional marking causes economic hardship and transit delays due to additional labor necessary to apply the extra UN identification numbers at the port. Air Products and Chemicals, Inc. provided neither a specific cost figure for these frustrated shipments nor the anticipated net savings of a regulatory change.

In the NPRM, PHMSA stated that the intent of the requirements in § 171.23(b)(10)(iv) is to provide hazard communication for international shipments of PIH materials transiting the United States under either the IMDG Code or the TDG equivalent to those established in the HMR, not to impose more restrictive requirements. The removal of the phrase referring to a "total quantity" will reduce potential confusion due to differences in inspection interpretations, handling costs, and transit time while maintaining an acceptable level of hazard communication for PIH materials. Therefore, PHMSA proposed to amend § 171.23(b)(10)(iv)(A) and (B) by removing the phrase "regardless of the total quantity contained in the transport vehicle or freight container" from each subparagraph.

In the NPRM, PHMSA solicited comment on the safety implications of such a change, as well as the net benefit (*e.g.*, a decrease in the number of frustrated shipments). We received only positive comments on this proposal. Air Products and Chemicals, Inc. supported the proposed change and commented:

The safety of transporting PIH materials will actually be improved with this proposed

regulation change. The effectiveness of hazard communication will not be reduced as the current UN marking requirement (for all quantities) provides no additional benefit from a hazard communication or emergency response perspective. What we do see is elimination of confusion and a requirement that would be much more consistent with the IMDG and TDG regulations, as well. We understand the importance of consistency between the regulations. Consistency goes a long way in eliminating confusion, especially in an emergency response situation when effective accurate communication is extremely important. The display of UN ID numbers on a transport vehicle for small individual quantities falsely gives the impression that there are large amounts of the hazardous material. In an Emergency Response situation, it is not wise to cause reactions that are based on a representation of a large quantity, when in fact, there is no large quantity. Effective emergency response is based both on knowledge of the hazards and knowledge of the quantity. The more consistency we have for hazard communication processes, the better.

The DGAC also supported the proposed change and commented:

This revision will eliminate confusion between the requirements for domestic shipments and international shipments. In addition, this revision is consistent with the goal to harmonize domestic regulations with the international requirements.

For these reasons, we are revising § 171.23(b)(10)(iv)(A) and (B) as proposed in the January 23, 2015 NPRM.

### Emergency Response Telephone Number (P-1597)

The DGAC submitted a petition (P-1597) requesting that PHMSA amend the emergency response telephone number requirements to prohibit the use of alphanumeric telephone numbers and only permit numeric telephone numbers since, currently, the HMR does not specifically limit the telephone numbers to be numeric under § 172.604(a). The DGAC stated that although telephone faces historically associated integers with letters (*e.g.*, 2<sup>ABC</sup>), this is no longer the case in all instances. As a result, emergency response telephone numbers presented alphanumerically could cause undesirable delays in acquiring emergency response information in time-sensitive situations as the first responder would have to first convert letters to numbers.

The DGAC further noted that PHMSA issued a letter of interpretation (Ref. No. 04-0032) confirming that alphanumeric presentation of an emergency response telephone number was acceptable but expressing concern about the delays it may cause.

In the NPRM, PHMSA proposed the revision to § 172.604(a) as outlined in

the petition and noted that the continued use of alphanumeric telephone numbers could cause unnecessary delays in emergency response situations. Additionally, PHMSA solicited comment on the cost implications of the proposed revision and, as a result, received four comments from AAR, ACA, ATA, and DGAC in support of this revision. The ATA commented that this revision will decrease chances of death or injury to transporters and emergency responders and that any minimal costs associated with transposing a number from its corresponding letter will be more than outweighed by the safety benefits. The ATA also noted that this revision will be beneficial to both non-English speakers and those unfamiliar with the traditional correspondence between numbers and letters on a telephone keypad. For these reasons, in this final rule we are revising § 172.604(a) as proposed in the January 23, 2015 NPRM.

#### Packaging Requirements for Nitric Acid (P-1601)

The UPS submitted a petition (P-1601) requesting that PHMSA revise the packaging requirements for ground shipments of nitric acid basing the petition on four loading and sorting operation incidents that occurred over a six-month period. The incidents did not result in any casualties, but varying degrees of property damage were assessed in each situation. The UPS noted that each incident involved the same packaging configuration—glass inner packagings within fiberboard outer packagings—and in each case, a breach of one or more inner packagings caused leakage, resulting in fumes, followed by the initiation of a fire involving the fiberboard outer packaging material. The UPS believes that the packaging requirements of the HMR applicable to ground shipments of nitric acid do not adequately address the hazards present.

As provided in § 173.158, packaging for ground shipments of nitric acid prescribe either outer packaging that is not reactive to contents or a combination packaging that includes non-reactive intermediate packaging and absorbent material. However, for concentrations of less than 90 percent nitric acid, the HMR permits the use of glass inner packagings of less than 2.5 L placed inside UN Specification 4G, 4C1, 4C2, 4D, or 4F outer packagings. This latter configuration is associated with the four incidents referenced by UPS in its petition for rulemaking.

The UPS proposed that PHMSA change § 173.158(e) to enhance the

packaging requirements applicable to nitric acid in concentrations less than 90 percent. Under the proposal in P-1601, when in wooden or fiberboard outer packaging, glass inner packagings used in the configuration prescribed in § 173.158(e) would be required to be packed in tightly-closed, non-reactive intermediate packagings and cushioned with a non-reactive absorbent material. The UPS feels that the addition of this intermediate packaging would properly address the hazards present in this concentration of nitric acid and would have prevented the above incidents from occurring.

In the NPRM, PHMSA proposed to require in § 173.158(e) that when nitric acid, in concentrations less than 90 percent, is placed in glass inner packagings to be packaged in wooden or fiberboard outer packaging, the glass inner packagings must be packed in tightly-closed, non-reactive intermediate packagings and cushioned with a non-reactive absorbent material. In addition, PHMSA solicited comment on whether or not the proposed packaging should be applied to other similar materials as well as on cost burdens from the increase in packaging requirements. PHMSA received four comments from ATA, James Scott, UPS, and Veolia in support of the proposed revision. Veolia commented that it is company policy to place the inner 2.5 L glass bottles in a poly pail intermediate packaging or the outer container must include a leak-proof poly liner, further stating that they have implemented the use of the additional intermediate packages as an additional precautionary safety measure to contain leaking nitric acid, should the inner glass bottle fail. After implementing these packaging procedures, Veolia has not had any incidents of leaking nitric acid initiating a fire, of fumes, or of leaking material breaching the outer packaging. James Scott commented that this packaging requirement would be a cost burden for companies that still pack nitric acid in glass and further noted that the addition of intermediate packagings and absorbent material may require current combination packagings to be modified. Mr. Scott suggested that this impact can be minimized if flexible intermediate packagings are allowed and that the word “rigid” should not appear as part of the requirement.

PHMSA received only positive comments on this proposal. As proposed in the NPRM, the revised § 173.158(e) requires that when placed in wooden or fiberboard outer packagings, the glass inner packagings must be packed in tightly-closed, non-reactive intermediate packagings,

cushioned with a non-reactive absorbent material. The use of a flexible intermediate packaging is authorized, provided it can be tightly-closed and is non-reactive to the nitric acid. A “rigid” intermediate packaging was not proposed. Therefore, in this final rule, PHMSA is adopting the revision to § 173.158(e) as proposed in the January 23, 2015 NPRM. PHMSA notes that we did not receive any comments in response to the NPRM solicitation asking that proposed packaging be applied to any other specific hazardous materials and therefore, we are limiting the revision to nitric acid as proposed.

#### Pressure Test and Internal Visual Inspection Requirements for MC 331 Cargo Tanks (P-1604)

The NPGA submitted a petition (P-1604) requesting that PHMSA modify the pressure test and visual inspection test requirements applicable to certain MC 331 specification cargo tanks in dedicated propane delivery service, commonly known as bobtails, found in § 180.407(c). Currently, the HMR requires periodic pressure testing and visual inspection every five years to remain in service; however, the NPGA petitions PHMSA to extend the requalification period for certain MC 331 cargo tanks from five years to ten years and provides a technical case for this change.

The NPGA states in its petition that the five-year requalification period for bobtails is a burden to the propane industry further stating that these cargo tanks must be taken out of service for a period of up to a week and that water is introduced into the tank during the requalification process, which can be detrimental to both the tank and the contents. Before a tank can be returned to service, it must be completely free of any water. The NPGA states that this removal from service hinders a propane company's operations.

In 2001, the NPGA conducted a survey to determine whether companies that performed the five-year hydrostatic test requirement had experienced any failures. None of the 203 survey respondents reported a hydrostatic test failure for tanks of less than 3,500 gallons water capacity. Based on the results of this survey, the NPGA sponsored a study by the Battelle Memorial Institute (Battelle), a non-profit research and development organization, to determine whether a change to the requalification period would be technically feasible. Battelle developed crack growth models to estimate the time to failure of a tank that has undergone several pressure cycles. They also analyzed effects on the MC

331 cargo tank under the delivery service load conditions to determine the estimated life of the tank.

Based on the results of this study, the NPGA and Battelle recommend that PHMSA modify the requalification period from five years to ten years for MC 331 cargo tanks that: (1) Are used in dedicated propane service; (2) have a water capacity less than 3,500 gallons; and (3) are constructed of non-quenched and tempered (NQT) SA-612 steel and NQT SA-202 or SA-455 steels, provided the materials have full-size equivalent (FSE) Charpy Vee notch energy test data that demonstrates 75 percent shear-area ductility at 32 °F with an average of three (3) or more samples greater than 15 ft-lb FSE, and none with less than 10 ft-lb FSE. A copy of this study is in the docket for this rulemaking.

After considering the NPGA survey results, which cite no reported incidents, and the study commissioned by the NPGA, PHMSA determined that the petition merited consideration of a rulemaking change. The NPGA notes there is a strong safety record amongst its members regarding this issue and the cost savings to the industry would be significant. The NPGA commented in support of the proposed revision to the requalification requirements for MC 331 or bobtail cargo tanks and provided cost estimates as requested by PHMSA. They provide that requalification pressure tests can cost as much as \$3,000 when factoring in the downtime of the bobtail as well as the labor and fuel required to drive it to the testing shop or facility. In addition, the NPGA estimates that there are approximately 18,000 bobtails in service that would be eligible for the extension to the requalification period. This represents a total industry cost of about \$54 million to requalify these vehicles by hydrostatic test. If the proposed requirements are extended to ten years, it would reduce the industry's costs by half, resulting in approximately \$5.4 million on an annual basis.

PHMSA received one anonymous comment concerning the provisions in Note 5 to the § 180.407(c) table. In addition to MC 331 cargo tanks constructed of nonquenched and tempered NQT SA-612 steel, Note 5 authorizes a ten-year inspection interval period applicable to cargo tanks constructed of NQT SA-202 or NQT SA-455 steel. This ten year interval applies if the materials have full-size equivalent (FSE) Charpy vee notch (CVN) energy test data that demonstrated 75 percent shear-area ductility at 32 °F with an average of three (3) or more samples greater than 15 ft-lb FSE with no sample less than 10

ft-lb FSE. The commenter states that Note 5 contains very specific information that is not available to most cargo tank owners or enforcement personnel. As such, the commenter states that there will be no way to determine that the cargo tank satisfies the Note 5 requirements on the roadside or at the cargo tanks owner's place of business without the paperwork to verify compliance. The commenter also states that PHMSA needs to make clear that if a cargo tank owner cannot document this information, then the cargo tank is not eligible for the ten-year requalification period and would be subject to a five-year requalification interval.

PHMSA agrees that if a cargo tank owner cannot produce documentation that a MC 331 cargo tank meets the requirements for a ten-year requalification interval, they are subject to the five-year requalification interval. Section 178.337-2(a)(3) requires that a MC 331 fabricator shall record the heat, and slab numbers, as well as the certified Charpy impact values where required, of each plate used in each cargo tank on a sketch showing the location of each plate in the shell and heads of the cargo tank. Copies of each sketch shall be provided to the owner, retained for at least five years by the fabricator, and made available to duly identified representatives of the Department of Transportation. PHMSA received no other comments on this issue and therefore, we are adopting as proposed to revise the pressure test and internal visual inspection requirements found in § 180.407(c) for certain MC 331 specification cargo tanks from a five-year requalification period to a ten-year period.

Mobile Acetylene Trailer Systems (P-1605) and NTSB Safety Recommendations H-09-01 and H-09-02

The CGA submitted a petition (P-1605) requesting that PHMSA amend the HMR to incorporate a reference to CGA G-1.6-2011, *Standard for Mobile Acetylene Trailer Systems*, Seventh Edition, copyright 2011. This standard provides minimum requirements necessary for the design, construction, and operation of mobile acetylene trailer systems, which consist of acetylene cylinders mounted and manifolded for the purposes of charging, transporting, and discharging acetylene. It also covers ground-mounted auxiliary equipment used with mobile acetylene trailers such as piping, meters, regulators, flash arrestors, and fire protection equipment.

This petition coincides with two NTSB recommendations (H-09-01 and

H-09-02) issued to PHMSA based on incidents involving mobile acetylene trailers.<sup>1</sup> In response to the petition and recommendations, PHMSA determined that it would consider a rulemaking change. Further detailed discussion of this issue can be found in the Section-by-Section Review for § 173.301.

Pressure Relief Devices for Cargo Tanks (P-1609)

The TTMA submitted a petition (P-1609) requesting that PHMSA amend the requirements of § 180.407 applicable to pressure relief devices (PRDs). Specifically, TTMA requests that PHMSA revise the HMR to more clearly establish the set pressure of a PRD for each of the DOT specification cargo tank motor vehicles. The TTMA states that the wording of § 180.407(d)(3) and (g)(1)(ii), applicable to the testing requirements for PRDs, creates issues for persons performing the testing.

The TTMA points out two specific issues with these paragraphs: The first is the term "set-to-discharge." On April 9, 2009, PHMSA published a final rule [Docket No. PHMSA-2006-25910 (HM-218E); 74 FR 16135; effective May 11, 2009], where in an attempt to harmonize with international standards, PHMSA replaced the phrase "set-to-discharge" with "start-to-discharge." The TTMA explains that this is an issue because the discharge pressure referenced is used to figure the minimum pressure at which the PRD should reseal. By changing the wording from "set" to "start," the reseating pressure changed from a design requirement to one based on what a given vent actually does under test. Therefore, instead of testing a PRD knowing its reseating requirements, testers must perform the test of a given PRD, calculate the reseating pressure of that particular PRD, and then, retest from that pressure. Essentially, testers of PRDs could test identical products at different pressures because the reseal pressure is no longer a fixed design requirement. This creates inconsistencies between the reseating pressures of comparable PRDs authorized for identical hazardous materials service. The TTMA states that this change compromises safety, instead of promoting it.

The second issue TTMA points out in its petition is in regards to the term "the required set pressure." This term is problematic in relation to the continuing operation of existing cargo tanks made to older specifications in § 180.405(c). As the codes for the older

<sup>1</sup> [http://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/NTSB%20Files/H\\_09\\_1\\_2\\_Original.pdf](http://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/NTSB%20Files/H_09_1_2_Original.pdf)

specifications of cargo tanks are no longer published, determining “the required set pressure” is problematic. This is an issue for current specifications of cargo tanks as well. There are pressure allowances during the retesting of pressure relief devices of no more than 110 percent of the required set pressure (§ 180.407(d)(3)) and the same 10 percent allowance for DOT-400 series cargo tanks (§ 178.345-10(d)) creates confusion for current specification cargo tanks. The TTMA believes this will create an unsafe condition for tanks, as a PRD is no longer functioning as designed by the manufacturer; thus the PRD may actually open at higher pressures (near a cargo tank’s test pressure) as opposed to the appropriate lower design pressure.

The TTMA petitioned that PHMSA revise the HMR for testing of PRDs by replacing the current requirements found in § 180.407(d)(3) and (g)(1)(ii) with a reference to a new paragraph (j) that would detail the PRD test requirements. The TTMA believes this change will eliminate confusion for testers by clarifying the requirements for opening and reseating pressures when beginning the tests, while simultaneously enhancing the enforcement of these requirements by creating consistency in the testing requirements for cargo tank PRDs of the same design.

PHMSA determined that TTMA’s petition merited consideration of a rulemaking change based on the need for consistent and clear testing requirements for PRDs on DOT specification cargo tanks, and as a result, PHMSA received five comments in support of the proposed revision. Girard Equipment, Inc., TTMA, Mr. Peter Weis, Betts Industries Inc., and Dow Chemical Company commented in support of the amendment. One anonymous commenter believed the proposed amendment is not in the best interest of safety, stating that the revision will allow for PRDs intended for the DOT-400 series of cargo tanks to be installed on DOT-300 series cargo tanks, therefore opening at well over the maximum allowable working pressure (MAWP) of the DOT-300 series. The TTMA responded to this commenter in a follow-up comment stating that the anonymous commenter is incorrect, further stating that the proposed amendment keeps PRDs on upgraded DOT-300 series cargo tanks functioning according to the requirements for DOT-400 series cargo tanks and that this represents an improvement in safety, which is why they are required on current construction and why provision

is made for upgrading older construction tanks. Due to the overwhelming support to TTMA’s petition and the NPRM, PHMSA is adopting the revisions to both § 180.407(d)(3) and (g)(1) as proposed to reference a new paragraph (j), which will outline the testing requirements applicable to PRDs.

#### Application for Designation as a Certification Agency

An anonymous commenter stated that § 107.402(f) incorrectly cites the requirements for inspection and test marking in § 180.605(k) and further suggests that § 107.402(f) should cite the pressure test procedures in § 180.605(h). PHMSA disagrees, believing instead that § 107.402(f) should be revised to correctly reference Approval of Specification UN Portable Tanks, which would be consistent with § 107.402(f)(2). Therefore, in this final rule, PHMSA will revise § 107.402(f) to reference § 178.273 instead of § 180.605(k).

#### B. Provisions Not Adopted in This Final Rule

Based on an assessment of the proposed changes and the comments received, PHMSA identified four provisions that we are not adopting in this final rule: (1) The incorporation by reference into § 171.7 of the proposed edition of the Association of American Railroads (AAR) *Manual of Standards and Recommended Practices, Section C-III, Specifications for Tank Cars, Specification M-1002* (Specifications for Tank Cars); (2) the revision to the forbidden material requirements in § 173.21(e); (3) the odorization of cylinders and certain cargo tanks containing liquefied petroleum gas (LPG); and (4) the revision to the definition of “person” in § 180.401. Below is a summary of the amendments proposed, the comments received, and PHMSA’s rationale for not adopting these proposed amendments.

#### Incorporation by Reference of AAR Specifications for Tank Cars (M-1002)

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. Section 171.7 lists all standards incorporated by reference into the HMR and informational materials not requiring incorporation by reference. One particular incorporation by reference is the AAR’s *Specifications for Tank Cars*, October 2000 edition for various tank

car design, manufacture, inspection and testing, and qualification regulations set forth in parts 173, 179, and 180 of the HMR. As currently incorporated by reference, all sections refer to the October 2000 edition of this document.

AAR frequently updates the specifications for tank cars; however, PHMSA has not formally received a petition for rulemaking to revise the HMR to reflect more current versions of the AAR Specifications for Tank Cars.

In the NPRM, we proposed to revise the incorporation by reference for this document to include the 2007 edition of the AAR Specifications for Tank Cars and certain subsequent amendments. PHMSA also proposed to revise § 179.24(a)(2) to remove the reference to the December 2000 edition of this document and instead replace it with a generic reference to the AAR Specifications for Tank Cars. Additionally, we proposed to revise § 180.503 to replace the reference to the “AAR Tank Car Manual” with “AAR Specifications for Tank Cars” for consistency with references to this document elsewhere in the HMR. PHMSA also notes that the FRA had reviewed the 2007 standard and the subsequent amendments and determined not to incorporate the 2007 standard in its totality.

PHMSA received three negative comments to this direct proposal for incorporation by reference. The Chlorine Institute (CI) commented that it is PHMSA’s assertion that FRA does not support certain amendments of a given chapter or appendix [of the Specifications for Tank Cars] due to “safety concerns,” furthermore stating that those concerns should be explained in the rulemaking. If FRA has determined that specific standards or practices are unsafe, CI questions if it should be required to comply with a different version of the M-1002 Tank Car Manual, per AAR requirements, as opposed to simply complying with what is currently in the HMR. The AAR requests that the final rule include the latest edition of the AAR Specification for Tank Cars that was published in November 2014 and that PHMSA provide it with a list of these “safety concerns” in reference to the AAR Specifications for Tank Cars. Moving forward AAR strongly supports working together with PHMSA and FRA on a scheduled implementation plan to evaluate and incorporate amendments made by the AAR to the incorporation by reference of the AAR Specifications for Tank Cars. Dow Chemical Company had concerns with PHMSA’s approach and believes the HMR should simply incorporate by reference the most

current version of the AAR Specifications for Tank Cars. They go on to state that referencing certain previous amendments of older versions of the standards into the HMR will cause confusion and unnecessary burden. If, as PHMSA states in the NPRM, the FRA does not support specific current AAR standards or practices and deems them unsafe, then Dow Chemical Company believes those “safety concerns” should further be explained.

After consideration of the comments received, PHMSA in consultation with FRA agrees with commenters and will not adopt the incorporation by reference as proposed. PHMSA and FRA agree that the safety concerns raised by FRA are not adequately explained and that a more current version of the AAR Specifications for Tank Cars is available and thus good cause reasons exist for not adopting the proposed amendment. The FRA will continue to evaluate amendments made to the AAR Specifications for Tank Cars and will update the effective dates for referenced chapters or appendices, as appropriate, when such amendments are supported by FRA. PHMSA and FRA agree with AAR that future collaborative efforts to update both the AAR Specifications for Tank Cars and the corresponding incorporation by reference into the HMR would be beneficial to stakeholders.

PHMSA further notes that we received a negative joint comment from PublicResource.org and Greenpeace regarding our general practice of incorporating by reference. They did not comment on the substantive merits of the proposed rule. Instead, they ask PHMSA to recognize that it has acted illegally and arbitrarily at the NPRM stage in not making the standards—which are integral parts of the rule—available to the public for review without having to pay for them. They go on to state that the unwarranted action by PHMSA places an unreasonable burden on members of the public who wish to review the entire rule in order to fully understand it and to make appropriate comments. PHMSA disagrees with the basis for the joint comment as we have complied with the requirements in 1 CFR part 51 for incorporation by reference. However, as discussed above, we are not adopting the revision to the incorporation by reference of the AAR Specifications for Tank Cars as proposed.

It is noted that the editorial revisions to §§ 179.24(a)(2) and 180.503 are being adopted as proposed as clarifying amendments.

#### Prohibition of Materials in the Same Transport Vehicle

Section 173.21 outlines forbidden materials and packages, with paragraph (e) of this section forbidding the transport of a material in the same packaging, freight container, or overpack with another material, that if mixed would likely cause a dangerous evolution of heat, flammable or poisonous gases or vapors, or the production of corrosive materials. While this prohibition prevents incidents from occurring within a freight container, overpack, or the same container, there is no prohibition on this type within a transport vehicle (e.g., a truck with single trailer).

In May 2013, PHMSA received a request for a letter of interpretation (Ref. No. 13–0111) describing a potentially dangerous situation whereby a company offers for transportation “UN1908, Chlorite Solution, Class 8, Packing Group (PG) II,” “UN1791, Hypochlorite Solutions, Class 8, PG III” and “UN1789, Hydrochloric Acid Solution, Class 8, PG II” in separate intermediate bulk containers (IBCs) in the same transport vehicle. While there are no formal segregation requirements per § 177.848 of the HMR, data accompanying the letter indicated that in the event of co-mingling, these materials would create chlorine dioxide gas. “Chlorine dioxide (not hydrate)” is forbidden for transportation per the § 172.101 HMT. Thus, the transportation of these materials in the same transport vehicle would create a situation where the mixing of the materials would produce a poisonous gas and highly corrosive material, which happens to also be forbidden from transport; yet, under the current construct of § 173.21, there is no prohibition against this transport scenario.

In the NPRM, PHMSA proposed to prohibit the transportation or offering for transportation of materials in the same transport vehicle (e.g., a trailer, a rail car) with another material that is likely to cause a dangerous evolution of heat, flammable or poisonous gases or vapors, or produce corrosive materials upon mixing for both rail and highway transport.

PHMSA received 13 comments on the proposed amendment from AAR, ACC, ATA, CI, COSTHA, DGAC, IME, Jones Chemical, NACD, RIPA, UPS, USWAG, and Veolia. All of the comments strongly opposed the proposed amendment. The commenters addressed topics related to the proposed amendment such as the difficulty in implementing the prohibition; the impact on shipper and carrier

operations; the economic implications; and the safety benefit, or lack thereof. An overview of these comments is provided below, and the complete list of comments pertaining to this amendment is available in the docket for this rulemaking.

The majority of commenters stated that carriers, offerors, and other hazardous materials employees typically have neither sufficient information available nor the technical expertise to make the assessments necessary to comply with the proposed amendment. As such, a carrier cannot be expected to identify and evaluate each individual package consigned for carriage to determine whether the materials in those packages would be compatible with each other in the unlikely event they were to be unintentionally mixed. Further, shippers cannot possibly know what other packaged materials will be transported in the vehicle carrying their products and cannot be expected to determine whether any of the materials onboard the vehicle, if inadvertently mixed, would create a hazard. The DGAC commented that this prohibition would apply not only to materials identified as hazardous materials, but also to non-hazardous materials.

The majority of commenters stated that the proposed prohibitions would result in increased costs as offerors and carriers would need to further segregate hazardous materials, thus creating the need for separate trucks to carry materials presently authorized for carriage in a single truck. Several of the commenters indicated that this would increase highway traffic as well as the probability of highway accidents. Veolia commented that many of their customers generate waste materials that would be deemed to be incompatible for shipment together if this new restriction is adopted further stating that this would result in the need to ship the wastes off-site for disposal using more than one transport vehicle to accommodate the proposed restrictions. Another commenter, NACD, notes there would be an increase in distributor costs, as distributors would need to purchase more trucks to increase their fleets.

Several commenters stated their belief that the segregation provisions of § 177.848 already sufficiently address the danger associated with co-loading incompatible materials and that these provisions have a proven and long-standing safety record. COSTHA commented that the § 177.848 segregation table clearly indicates when certain hazard classes or divisions are known to react dangerously and,



therefore, when they must be segregated. COSTHA further noted that the segregation table was developed on the basis that the current classification system is an adequate and appropriate manner to classify materials. Furthermore, Veolia pointed out PHMSA's own words in letter Ref. No. 13-0111: "[w]e recognize the concerns that you have regarding the transport of Chlorite and Hypochlorite Solutions with Hydrochloric Acid in the same transport vehicle. However, we believe that the packaging requirements for these materials mitigate the potential for comingling and subsequent dangerous evolution of gas."

Based on the comments received, PHMSA will not be adopting any changes to the forbidden materials provisions specified in § 173.21(e). It was not PHMSA's intent to propose an amendment that would impose a significant operational and economic burden on the regulated community; rather PHMSA's intention was to address a safety issue identified through a request for a letter of interpretation. Based on further review and the rationale presented by commenters, PHMSA believes the current packaging and segregation requirements adequately address the unlikely scenario of a dangerous situation caused by the unintentional and unlikely mixing of materials during transport.

#### Odorization of Cylinders and Certain Cargo Tanks Containing Liquefied Petroleum Gas (LPG)

Section 172.304a prescribes the filling requirements for cylinders containing compressed gases. In the NPRM, PHMSA proposed to add new § 173.304a(d)(5) in addition to the proposed revised text in §§ 173.314(h) and 173.315(b)(1) that addresses the odorization of LPG in rail tank car tanks and cargo tanks, respectively. We also proposed to revise the existing § 173.315(b)(1) to add a performance standard to address the issues of "under-odorization" and "odor fade." PHMSA received comments from the NPGA in opposition to extending the odorization standards proposed to cylinders and revision of the requirement to cargo tanks. They state that, while it may seem intuitive to simply apply the requirements to these additional containers, PHMSA was unaware of the impact this will have on retail propane marketers further downstream in the distribution chain, and as proposed, they believe the requirement would place an undue burden on retail propane marketers, particularly for the more than 90

percent of NPGA members designated as small businesses.

On June 26, 2015, PHMSA met with representatives of NPGA and their membership, as well as the National Association of State Fire Marshalls (NASFM) to discuss the odorization provisions in the NPRM. In this meeting, NPGA and NASFM outlined in further detail their concerns with the proposed requirements. The NPGA reiterated the downstream consequences of the proposed requirement to fillers, distributors, and sellers of cylinders and smaller cargo tanks under 3,500 gallons capacity (previously mentioned as "bobtails"). As stated in their comment, NPGA provides cost information associated with the proposed requirements, estimating that with 200,000 cylinder fillings daily, quantitative testing requirements for cylinders would likely exceed \$480 million per year to the industry. Bobtails that experience high turnover (three to five fills per day) would be subject to the proposed odorant performance standard as well. These distributors of propane do not have the odorant chemical (ethyl mercaptan) on site, nor the trained personnel and experience to comply with the proposed requirement. They went on to state that applying the requirement to rail tank cars is the most effective means of addressing odorant fade as it is the furthest upstream transportation. If a rail tank car is effectively odorized, all movement downstream would meet the odorant requirements and presumably not fade. The NASFM commented in the meeting in support of NPGA on this issue. Furthermore, the NPGA claimed that odorant fade is most likely to occur in mixed-use rail tank cars as they are not used in "dedicated service" and are cleaned prior to filling with propane. Meanwhile, bobtails and bulk storage tanks are in "dedicated service" so they experience less odorant fade due to being "seasoned"—*i.e.*, there is less absorption of odorant into the tank walls and, thus, more odorant remains mixed with the LPG.

In the meeting, the NPGA stated that the National Fire Protection Association (NFPA) already requires a "sniff-test" for odorized LPG and provided cost information on the existing "sniff test." While this test is not in the HMR, the cost data provided by NPGA estimates an annual total of \$9 million to the industry. The NPGA cost information, as well as the meeting notes can be found in the docket for this rulemaking.

PHMSA recognizes the NPGA's concerns and does not intend to place an undue economic burden on retail distributors of LPG. With an

understanding of the propane industry's supply chain, we hope to address odorization further up the transportation stream to avoid odorant fade or under-odorization occurring downstream. It is not our intent to require retail distributors offering for transport or transporting propane from their bulk storage facilities to end users in cylinders or bobtail cargo tanks to qualitatively test odorant levels in the LPG. Instead, our goal with the revisions adopted would be to require this testing for larger packages of LPG (rail tank cars or certain cargo tanks) from a refinery, gas plant, or pipeline terminal destined for those retail distributors. While provisions requiring odorization and measures to address odorant fade or under-odorization for cylinders, cargo tanks, or portable tanks not originating from a refinery, gas plant, or pipeline terminal are not being adopted in this rule, amendments addressing rail tank cars and other point-of-origin transportation are discussed further in the preamble.

#### Applicability of the Word "person" § 180.401

In the NPRM, PHMSA proposed to revise the term "person" to "hazardous materials employee or hazardous materials employer." The proposed revision was an attempt to clarify that subpart E of part 180 qualification and maintenance of cargo tank requirements applies not only to persons offering hazardous materials for transportation or transporting a hazardous material, but also to those involved with qualification, maintenance, or periodic testing of cargo tanks. PHMSA received an anonymous comment pointing out that the proposed revision is unnecessary because the definition for "person" in § 171.8 already applies to a person that designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce. We agree with the commenter that the definition for "person" in § 171.8 already adequately and accurately addresses the applicability of subpart E of part 180. Therefore, PHMSA will not be adopting the proposed revision to § 180.401.

#### Reference to the Manufacturer's Report Requirements in § 178.65(i)(1)

In the NPRM, we proposed to revise § 178.65(i)(1) to correctly reference the manufacturer's report requirements in § 178.35(g). A final rule published July 20, 2011 [Docket No. PHMSA-2009-

0151 (HM-218F)] removed paragraph (h) and moved the manufacturer's report retention requirements into paragraph (g). Although PHMSA did not receive any comments on this proposed revision, PHMSA did identify a letter of interpretation (Ref No. 01-0125) that noted an error in what is referenced in § 178.65(i)(1). In the letter, PHMSA agreed that § 178.65(i)(1) should include an exception from the marking requirements provided in § 178.35(f), not the manufacturer's report requirements in paragraph (h) (and subsequently paragraph (g)), and noted that it warranted a rulemaking change. In light of the letter of interpretation, PHMSA believes that further review is needed to determine the full intent of the exception provided in § 178.65(i)(1). Thus, PHMSA will not be adopting the revision to § 178.65(i)(1) as proposed.

#### *C. Comments Outside the Scope of This Rulemaking*

PHMSA received eighteen (18) comments that were either outside the scope of the proposed rulemaking or not specifically addressing the proposed regulatory changes. Mr. Adrian Mendoza generally supported PHMSA's rulemaking efforts in the interest of public health and safety. Mr. Aaron Adamczyk submitted a list of materials to be incorporated by reference but did not respond directly to any provisions in the NPRM. An anonymous commenter stated that the issue that caused the revision proposed in §§ 173.170 and 173.171 is also found in § 173.6 for materials of trade, and the term "motor vehicle," which includes both the truck and trailer, limits the exception; the commenter further requested that we consider changing the term "motor vehicle" to "transport vehicle" to allow the materials of trade exception to apply to each unit. While PHMSA finds value in this comment, we did not propose this revision and therefore will not adopt the commenter's suggestion.

Another anonymous commenter stated that the definitions of cargo tank in §§ 171.8 and 178.320 do not match and further requests revising the definition in § 171.8 to be consistent with the definition in § 178.320, which includes solids and semi-solids. This revision was also not proposed in the NPRM, and therefore, PHMSA is not adopting the change.

The remaining fourteen (14) comments addressed our August 1, 2014, "Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains (HM-251)," proposed rule. That rulemaking covered several key issues related to the safe

transport of crude oil and other flammable liquids by rail and its comment period closed on September 30, 2014 under Docket No. PHMSA-2012-0082. As these issues raised by commenters under the docket for HM-218H were not proposed in HM-218H, PHMSA will not address the comments in this final rule and consider the comments as outside the scope of the rulemaking.

#### **IV. Section-by-Section Review**

##### **Part 107**

##### *Section 107.402*

Section 107.402 sets forth the application requirements for designation as a certification agency to issue certificates and certifications for packagings designed, manufactured, tested, or maintained in conformance with the HMR and standards set forth in the UN Model Regulations. This section also sets forth the application requirements for designation as a certification agency to issue certificates and certifications for lighters, portable tanks, multi-element gas containers, and Division 1.4G consumer fireworks.

PHMSA is revising § 107.402(d)(1)(i) to indicate that a fireworks certification agency applicant must be a U.S. resident or, for a non-U.S. resident, must have a designated U.S. agent representative as specified in § 105.40. The criteria for fireworks certification agencies were added to the HMR in a final rule published April 2, 2015 [Docket No. PHMSA-2010-0320 (HM-257); 78 FR 42457]. PHMSA intended for § 107.402(d)(1)(i) to correspond with the requirements of § 105.40, which specifies designated agents for non-residents; however, the term "citizen" was inadvertently substituted for "resident," thus PHMSA is revising § 107.402(d)(1)(i) by replacing the term "citizen" with the term "resident."

PHMSA is also revising § 107.402(e) to require that a lighter certification agency submit a statement to the Associate Administrator explaining that the agency is independent of and not owned by a lighter manufacturer, distributor, import or export company, or proprietorship. Further, we are revising § 107.402(f) to require that a portable tank and MEGC certification agency submit a statement to the Associate Administrator indicating that the agency is independent of and not owned by a portable tank or MEGC manufacturer, owner, or distributor. This language was included in § 107.402 and pertained to all certification agencies, but it was removed inadvertently as a result of changes

made to the HMR in rulemaking HM-257.

Section 107.402(f) sets forth the requirements for portable tank and MEGC certification agencies prior to inspecting for compliance with the HMR. PHMSA is revising § 107.402(f) to reference Approval of Specification Portable Tanks as provided in § 178.273, rather than § 180.605(k). This would be consistent with § 107.402(f)(2).

##### *Section 107.807*

Section 107.807 sets forth the requirements for authorizing chemical analyses and tests for non-domestic manufacturers of DOT specification or special permit cylinders. To maintain consistency with requirements of other independent inspection agencies, PHMSA is revising § 107.807(b)(3) to require that the agency submit a statement indicating that the inspection agency is independent of and not owned by a cylinder manufacturer, owner, or distributor.

##### **Part 171**

##### *Section 171.7*

As previously stated, the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. Section 171.7 lists all standards incorporated by reference into the HMR and informational materials not requiring incorporation by reference. The informational materials not requiring incorporation by reference are noted throughout the HMR and provide best practices and additional safety measures that, while not mandatory, may enhance safety and compliance. Table 1 in § 171.7 lists informational materials that are not incorporated by reference. In a final rule published on January 28, 2008 [Docket No. 2005-21812 (HM-218D); 73 FR 4699, effective October 1, 2008], PHMSA added in Table 1 (formerly paragraph (b) of the section) an entry for the CGA publication, CGA C-1.1, *Personnel Training and Certification Guidelines for Cylinder Requalification by the Volumetric Expansion Method*. Following the publication of HM-218D, PHMSA received an appeal from Hydro-Test Products, Inc. (PHMSA-2005-21812-0025) asking us to either remove the reference to CGA C-1.1 or add examples of other training materials that may be used. Hydro-Test noted that referencing only the CGA publication in the HMR could suggest that other training materials are not acceptable.

PHMSA added CGA C-1.1 as an example of guidance material that may be used to assist requalifiers in creating their cylinder training procedures and recordkeeping requirements. The publication is not a standalone tool for training persons on how to perform requalification of cylinders using the volumetric expansion test method. To alleviate confusion for cylinder requalifiers, PHMSA intended to remove the reference to CGA C-1.1 in §§ 171.7 and 180.205 in a previous editorial final rule published on October 1, 2008 [Docket No. PHMSA-2008-0227 (HM-244A); 73 FR 57001, effective October 1, 2008]. However, PHMSA removed reference to the document only in § 180.205(g)(6) and inadvertently failed to remove the reference in § 171.7. In this final rule, PHMSA is amending Table 1 to § 171.7 by removing the entry for CGA C-1.1 to align the regulatory text with previous rulemaking actions.

Additionally, as described in the Comment Discussion for petition for rulemaking P-1605 and more fully discussed in the Section-by-Section Review for § 173.301, PHMSA is amending the HMR to incorporate by reference CGA G-1.6-2011, *Standard for Mobile Acetylene Trailer Systems*, Seventh Edition, copyright 2011.

Section 171.7(k) incorporates The *AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M-1002*, (*AAR Specifications for Tank Cars*), December 2000. This standard prescribes approval requirements, general design and test requirements, structural requirements, valves and fittings, marking, recommended maintenance practice, and certification of tank car facilities. In this final rule, PHMSA is amending paragraph (k) of this section to list sections §§ 179.24 and 180.503 that reference this standard but were inadvertently omitted in a final rule published June 25, 2012 [Docket No. PHMSA-2010-0018 (HM-216B); 77 FR 37961].

#### Section 171.22

In a May 3, 2007 final rule [Docket No. PHMSA-2005-23141 (HM-215F); 72 FR 25162], the importer responsibility requirements were transitioned from § 171.12(a) to § 171.22(f). When transitioning the requirement that a person importing a hazardous material into the United States must provide the shipper and forwarding agent with information required under the HMR, the shipper notification was inadvertently omitted. As a result, only the forwarding agent is presently required to be provided with

information as to the requirements of the HMR applicable to the particular shipment. In this final rule, PHMSA is reinstating text in § 171.22(f) to clearly state that both the shipper and forwarding agent at the place of entry must be provided with written information on the requirements of the HMR applicable to the particular shipment. PHMSA received two comments from ACA and DGAC providing general support for the amendment as proposed.

#### Part 172

##### Section 172.101

Section 172.101 contains the HMT and explanatory text for using the table information and each of the columns. In this final rule, PHMSA is making a number of revisions to the § 172.101 HMT: including the special provisions listed in Column (7) and specified in § 172.102; removing the PG II designation from Column (5) of the HMT for organic peroxides (Division 5.2), self-reactive substances (Division 4.1), and explosives (Class 1) as requested in P-1590; and clarifying the regulations and correct inadvertent errors. Changes to the § 172.101 HMT will appear as a “revise,” and include changes to the following table entries: “Calcium nitrate, UN1454,” “Corrosive liquids, flammable, n.o.s., UN2920,” “Fire extinguishers, UN1044,” “Oxidizing solid, corrosive, n.o.s., UN3085,” “Propellant solid, UN0501,” “Trinitrophenol (picric acid), wetted, with not less than 10 percent water by mass, UN3364,” and “Trinitrophenol, wetted with not less than 30 percent water, by mass, UN1344.”

The entry for “Calcium nitrate, UN1454” is being revised to reflect a change that was intended to be made when PHMSA published a final rule on January 7, 2013 [Docket No. PHMSA-2012-0027 (HM-215L); 78 FR 987]. Special Provision B120 was inadvertently not assigned to the entry for “Calcium nitrate, UN1454” when several other HMT entries were revised to include it. Special Provision B120 indicates that the material, when offered in conformance with the applicable requirements of part 178 and general packaging requirements in part 173, may be offered for transportation in a flexible bulk container. PHMSA is revising the HMT to add Special Provision B120 to Column (7) for the entry “Calcium nitrate, UN1454.”

The entry for “Corrosive liquids, flammable, n.o.s., UN2920” is being revised to harmonize the HMR with the UN Model Regulations, IMDG Code, and the ICAO TI by means of providing

limited quantity exceptions for the PG II entry. Therefore, PHMSA is revising the entry for “Corrosive liquids, flammable, n.o.s., UN2920, PG II” to remove the word “None” from Column (8A) of the HMT and add “154.” This change will be consistent with similar PG II materials that are also provided the limited quantity exception.

The entry for “Fire extinguishers, UN1044” is being revised to eliminate reference to Special Provision 18, which is no longer in the HMR. Special Provision 18 was removed from § 172.102(c)(1) in a January 7, 2013 final rule [Docket No. PHMSA-2009-0126 (HM-215K); 78 FR 1101] and combined into revised § 173.309(a). We did not make a conforming amendment to remove Special Provision 18 from this entry in the HMT; thus, in this final rule, we are revising the entry for “Fire extinguishers, UN1044” by deleting the special provision.

The NPRM proposed to revise the entry for “Oxidizing solid, corrosive, n.o.s., UN3085” to harmonize with the UN Model Regulations, IMDG Code, and the ICAO TI by means of providing limited quantity exceptions for the PG II entry. However, in between the publishing of the NPRM and this final rule, PHMSA inadvertently revised this entry as proposed in a previous final rule [Docket No. PHMSA-2015-0103 (HM-260); 80 FR 72914]. Therefore, PHMSA will not be revising this entry in this final rule.

PHMSA received four comments on the proposed revisions to the UN3085 (as well as UN2920) in Column (8A). In their comments, ACA, Veolia, and URS supported the revision of these two entries to harmonize with UN Model Regulations, IMDG Code, and the ICAO TI. The URS provided a list of nine (9) additional PG II entries for which a limited quantity exception is provided under international standards but not in the HMR and requested the same revision made to UN2920 and UN3085 be made to these additional entries. An anonymous commenter requested that PHMSA make the same limited quantity exception revision to the UN3084, PG II entry. PHMSA agrees with the commenters that the HMR is not completely in alignment with the UN Model Regulations, IMDG Code, and the ICAO TI limited quantity exceptions with regard to these additional PG II entries. However, given the lack of historical context and the need for a technical review of each entry, PHMSA will only be revising the limited quantity exception for the entries that have been proposed. PHMSA may consider the revision to additional entries offered by the commenters under

a future rulemaking. Additionally, PHMSA encourages the commenters to submit a petition for rulemaking in accordance with §§ 106.95 and 106.100 for entries that they believe should also be revised.

The entry for “Propellant, solid, UN0501” is being revised to eliminate a reference to a requirement that is no longer in the HMR. Column (10B) of this entry lists vessel stowage provision 24E; however, vessel stowage provision 24E was removed from § 176.84(c)(2) when the Research and Special Programs Administration (RSPA), PHMSA’s predecessor, published a final rule on June 21, 2001 [Docket No. RSPA–2000–7702 (HM–215D); 66 FR 33316, effective October 1, 2001] that revised the table of provisions applicable to vessel transportation of Class 1 (explosive) materials. As this provision is no longer in the HMR, PHMSA is revising the entry for “Propellant, solid, UN0501” to remove vessel stowage provision 24E from Column (10B) of the HMT.

The HMT entries for “Trinitrophenol (picric acid), wetted, *with not less than 10 percent water by mass*, UN3364” and “Trinitrophenol, wetted *with not less than 30 percent water, by mass*, UN1344” are being revised to harmonize the HMR with the UN Model Regulations, IMDG Code, and the ICAO TI. Presently, Special Provision 162 is applied to UN3364 (*not less than 10 percent water*) and Special Provision 23 is applied to UN1344 (*not less than 30 percent water*). Special Provision 162 outlines a provision for transport of the material as Division 4.1: The material must be packed such that at no time during transport will the percentage of diluent fall below the percentage that is stated in the shipping description. Special Provision 23 is similar in that it also outlines this provision but includes an additional condition that quantities of not more than 500 grams per package with not less than 10 percent water by mass may also be classed in Division 4.1, provided a negative test result is obtained when tested in accordance with test series 6(c) of the UN Manual of Tests and Criteria.

The special provisions are assigned in the reverse manner to the trinitrophenol entries in the UN Model Regulations, IMDG Code, and the ICAO TI. Special Provision 23 is applied to UN3364 with the lower minimum diluent percent of water while the 500 gram limit per package for 10 percent diluent does not apply to UN1344 with the larger minimum diluent percentage of water (*i.e.*, 30 percent). Thus the special provision was incorrectly assigned in the HMR. For the entry “Trinitrophenol (picric acid), wetted, *with not less than*

*10 percent water by mass*, UN3364,” we are replacing Special Provision 162 in Column (7) of the HMT with Special Provision 23. Conversely, for the entry “Trinitrophenol, wetted, *with not less than 30 percent water, by mass*, UN1344,” we are replacing Special Provision 23 from Column (7) of the HMT with Special Provision 162.

PHMSA is revising Column (8C) of the HMT for “Asbestos, NA2212,” “Blue asbestos (*Crocidolite*) or Brown asbestos (*amosite, mysorite*), UN2212,” and “White asbestos (*chrysotile, actinolite, anthophyllite, tremolite*), UN2590,” to refer to packaging instructions in § 173.216, instead of § 173.240.

In a final rule published on November 23, 2015 [Docket No. PHMSA–2015–0103 (HM–260); 80 FR 72913], PHMSA revised the HMT entry “NA1993, Combustible liquid, n.o.s.” by removing special provision T4. In a subsequent final rule published on December 21, 2015 [Docket No. PHMSA–2011–0345 (HM–233D); 80 FR 79423] the same entry was revised by adding Special Provision 148. In making the addition of Special Provision of 148, the previously removed Special Provision T4 was inadvertently reinstated. This final rule corrects that error by removing Special Provision T4 from the entry for NA1993.

In a final rule published on January 21, 2016 [Docket No. PHMSA–2013–0042 (HM–233F); 81 FR 3635], PHMSA did the following:

- Inadvertently revised the “Corrosive liquids, n.o.s., UN1760” entry by assigning it the incorrect NA prefix and inserting Special Provision 386 to the Packing Group II and III entries. The HM–233F final rule should have revised the “Compounds, cleaning liquid, NA1760” entry by adding Special Provision 386 to the Packing Group II and III entries. This final rule corrects those errors by removing Special Provision 386 from the “Corrosive liquids” entry and adding them to the “Compounds, cleaning liquid” entry, and re-assigning the “Corrosive liquids” entry the correct prefix of UN.

- Inadvertently revised Column (10B) of the “Coating solution (*includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining*), UN1139” entry by removing the vessel stowage provision E and replacing with the letter B. Consequently, PHMSA is restoring the letter E in Column (10B) for this entry.

- Inadvertently revised Column (8B) of the “Printing ink, *flammable* or Printing ink related material (*including printing ink thinning or reducing compound*), *flammable*, UN1210” entry

by changing the packaging section for Packing Group I from § 173.173 to § 173.201. Consequently, PHMSA is restoring § 173.173 in Column (8B) for this entry. Further, in this final rule, PHMSA is correcting the roman and italicized text for this entry in Column (2) of the HMT.

- Inadvertently revised Column (7) of “Self-heating solid, organic, n.o.s., UN3088” by removing UN portable tank code T1 from the Packing Group III entry. Consequently, PHMSA is restoring the code to Column (7) of the HMT.

- Inadvertently revised Column (10B) of the “Potassium, UN2257”, “Sodium, UN1428”, and “Water reactive solid, n.o.s., UN2813” entries by removing vessel stowage provisions 13 and 148. Consequently, PHMSA is restoring the codes to Column (10B) of the HMT for each entry.

#### Section 172.102

Section 172.102 outlines special provisions that are listed in Column (7) of the § 172.101 HMT. Special Provision 136 is listed for the entry “Dangerous Goods in Machinery or Dangerous Goods in Apparatus, UN3363.” PHMSA received a request for a letter of interpretation (Ref. No. 12–0037) that sought confirmation that a material classed as a Class 2 gas that has packaging exceptions listed in Column (8A) of the HMT may be described as “Dangerous Goods in Apparatus, UN3363.” The requestor pointed out that the provisions in Special Provision 136 are inconsistent: Special Provision 136 currently states that except when approved by the Associate Administrator, machinery or apparatus may only contain hazardous materials for which exceptions are referenced in Column (8) of the HMT and are provided in part 173, subpart D. Subpart D contains the definitions, classification, packing group assignments, and exceptions for hazardous materials other than Class 1 and Class 7. However, preparation, packaging, and exceptions for Class 2 gases are located in subpart G of part 173. This should be indicated in Special Provision 136 to eliminate confusion that gases prepared in accordance with subpart G of part 173 would not be eligible to be described as “Dangerous Goods in Apparatus, UN3363.” It was not PHMSA’s intention to exclude Class 2 gases from using this proper shipping name, therefore, PHMSA is revising Special Provision 136 in § 172.102 to include reference to part 173, subpart G.

### Section 172.201

Section 172.201 prescribes the requirements for the preparation and retention of shipping papers. This paragraph requires that, except as provided in § 172.604(c), a shipping paper must contain an emergency response telephone number. The reference in this paragraph to § 172.604(c) is inaccurate. The requirements in § 172.604 applicable to emergency response telephone numbers were changed when PHMSA published a final rule on October 19, 2009 [Docket No. PHMSA-2006-26322 (HM-206F); 74 FR 53413, effective November 18, 2009]. This rulemaking action moved the exceptions regarding the requirement to provide an emergency response telephone number to a new paragraph (d). PHMSA received one comment from the American Coatings Association (ACA) in support of this change without further issue. In this final rule, PHMSA is revising § 172.201(d) to accurately reference the exception from the emergency response telephone number requirement found in § 172.604(d).

### Sections 172.301, 172.326, 172.328, and 172.330

Sections 172.301, 172.326, 172.328, and 172.330 prescribe marking requirements for non-bulk packagings, portable tanks, cargo tanks, tank cars, and multi-unit tank car tanks, respectively. Each of these sections contains a paragraph (specifically, §§ 172.301(f), 172.326(d), 172.328(e), and 172.330(c)) prescribing requirements for packages containing unodorized LPG to be legibly marked with “NON-ODORIZED” or “NOT-ODORIZED.” PHMSA received a request for a letter of interpretation (Ref. No. 06-0235) requesting clarification that the “NON-ODORIZED” or “NOT-ODORIZED” mark may also appear on a package containing odorized LPG. In the response letter, we noted that PHMSA addressed this issue in part in a final rule published by its predecessor agency, RSPA, on November 4, 2004 [RSPA-03-15327 (HM-206B); 69 FR 64462, effective October 1, 2006]. Final rule HM-206B changed the hazard communication requirements applicable to certain packages containing unodorized LPG, including the requirement to mark with “NON-ODORIZED” or “NOT-ODORIZED.” Specifically, it also clarified that the “NON-ODORIZED” or “NOT-ODORIZED” marking may appear on a tank car or multi-unit tank car tanks used for both unodorized and odorized LPG. This was implemented to address

the concerns expressed by a commenter about the logistics of tracking, inspecting, and stenciling tank cars to ensure proper marking. However, this clarification was not extended to cylinders, cargo tanks, and portable tanks containing LPG in that final rule. We further noted in the response letter that we intended to revisit this issue in a future rulemaking to extend this clarification to other packaging types that are filled with unodorized or odorized LPG.

PHMSA received negative comments from the NASFM, the NTSB, the IAFC, and the New Hampshire Office of the State Fire Marshall. The NTSB disagrees with the proposed exception, citing a 2005 railroad incident involving the release of diesel fuel from a locomotive and Safety Recommendation R-07-4 as grounds for their dissent.<sup>2</sup> The NTSB disagrees with both the proposed exception to expand eligible packaging types and the existing exception for tank cars, stating that it is concerned that the “NON-ODORIZED” or “NOT-ODORIZED” package markings would be rendered meaningless by the proposal to allow such a marking on a tank containing odorized LPG. It believes it is poor policy to allow “mislabeling” of LPG tanks merely for logistical convenience, further stating that while the HMR does not require odorization in all cases, the requirement to properly mark these packages as “ODORIZED” or “NOT-ODORIZED” based on the actual condition of the LPG being transported (odorized or not odorized) should be a fundamental tenet to emergency response planning and execution involving hazardous materials in transportation. Therefore, the NTSB urged PHMSA not to approve the proposed rule changes and suggests that instead, PHMSA approve an acceptable means for the “NON-ODORIZED” or “NOT-ODORIZED” marking to be temporarily covered whenever the container is used to transport odorized LPG. PHMSA disagrees with this comment and is puzzled as to how the incident cited in NTSB’s comment, which involved a collision of two trains and a release of diesel fuel from locomotives, is relevant to the proposed language from the NPRM. The allowance for the marking to remain on a package already exists for tank cars, so PHMSA simply proposed to extend this exception to other packaging types. We also disagree that the marking would be

rendered meaningless if allowed to remain on odorized tanks of LPG. If the contents were to undergo odorant fade during the course of transportation, this marking would provide an additional level of safety. Additionally, we fail to see how extending the requirement to existing package types is a detriment to the safety benefit provided by that mark existing on non-odorized packages of LPG.

The NASFM, IAFC, and the New Hampshire Office of the State Fire Marshall also provided negative comment; however, they did not comment on the proposed exception, instead focusing on the existing regulatory allowance for the marking to remain on tank cars and multi-unit tank car tanks. The three commenters all stated that the allowance of the marking to remain on odorized packages will create confusion for first responders when looking for leaks from containers with odorized LPG. They state that if the mark is seen on a tank that is actually odorized, they will skip over that tank and may miss a leak. PHMSA disagrees with the commenters and while we fully appreciate the benefit that odorization has for leak detection in an emergency response situation, we do not feel that it is the sole method to detect such leaks.

Thus, PHMSA is revising §§ 172.301(f), 172.326(d) and 172.328(e) to include the clarification that the marking may appear on these packagings used for both unodorized and odorized LPG and to remove the effective date of October 1, 2006. PHMSA is also removing the effective date referenced in paragraph § 172.330(c) for consistency.

### Section 172.406

Section 172.406 specifies the placement of labels on a package. Paragraph (d) of this section prescribes requirements that labels be printed or affixed to a background of contrasting color, or they must have a dotted or solid line outer border. Further, § 172.407(b)(2) provides that the dotted line border on each label shown in §§ 172.411 through 172.448 is not part of the label specification, except when used as an alternative for the solid line outer border to meet the requirements of § 172.406(d). Based on this language, it appears that labels with a dotted or solid line outer border are permitted only if the surface of the package is not a contrasting color, thus causing confusion.

In this rulemaking, we are amending § 172.406(d) by expressly authorizing the use of labels described in part 172, subpart E with a dotted or solid line

<sup>2</sup> R-07-4: With the assistance of the Federal Railroad Administration, require that railroads immediately provide to emergency responders accurate, real-time information regarding the identity and location of all hazardous materials on a train.

outer border on a background of contrasting color. There is no reduction in hazard communication with this revision, and it will provide cost savings to shippers by eliminating the need to acquire and store two types of labels (one with a border and the other without) depending on the surface color of the package. PHMSA received one comment from ACA providing support for this amendment as proposed.

#### *Section 172.407*

Section 172.407 contains label specifications. Paragraph (d) of this section contains color specifications for labels including a requirement for color tolerances according to color charts referenced in appendix A to part 172 of the HMR. Paragraph (d)(4)(ii) states that the color charts are on display at the Office of Hazardous Materials Safety, Office of Hazardous Materials Standards, Room 8422, Nassif Building, 400 Seventh Street SW., Washington, DC 20590-0001. This address does not reflect the current address of the Office; thus PHMSA is amending the address in § 172.407(d)(4)(ii) to read Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 2nd Floor, East Building, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

#### *Section 172.514*

Section 172.514 prescribes the placarding requirements and exceptions for a bulk packaging containing a hazardous material. Paragraph (c)(4) provides an exception for an IBC that is labeled in accordance with part 172, subpart E, instead of placarded. IBCs that are labeled instead of placarded are authorized to display the proper shipping name and UN identification number in accordance with the bulk package marking size requirements of § 172.302(b)(2) in place of the UN number on an orange panel, placard, or white square-on-point. Section 172.302(b)(2) requires that for IBCs, markings have a width of at least 4.0 mm (0.16 inch) and a height of at least 25 mm (one inch). This is inconsistent with the UN Model Regulations, IMDG Code, and ICAO TI, which all require a height of 12 mm (0.47 inch). The international size requirement is equivalent to the non-bulk marking size requirement provided in § 172.301(a)(1). In addition, the reference to the bulk packaging marking requirements of § 172.302(b)(2) in § 172.514(c)(4) conflicts with § 172.336(d) identification number marking requirements, which states that when a bulk packaging is labeled instead of

placarded in accordance with § 172.514(c), identification number markings may be displayed on the package in accordance with the marking requirements of § 172.301(a)(1).

In the NPRM, we proposed to clarify that the proper shipping name and identification number marking size for an IBC that is labeled instead of placarded is at least 12 mm (0.47 inch), doing so by replacing the bulk package marking reference in § 172.514(c) with the non-bulk marking reference, specifically, § 172.301(a)(1). PHMSA received four comments from ACA, DGAC, DOW, and URS providing support for this international harmonization action. In their comments DGAC, DOW, and URS all correctly point out that the UN Model Regulations, IMDG Code, and ICAO TI require a 12 mm (0.47 inch) minimum height requirement for the identification number on an IBC that is labeled rather than placarded, although, a minimum height for the proper shipping name is not prescribed. The DGAC and DOW suggested § 172.514(c) be revised by removing the words “size requirements” from the proposed text which currently reads “. . . the IBC may display the proper shipping name and UN identification number markings in accordance with the size requirements of § 172.301(a)(1) . . .” Additionally, URS suggested that § 172.301(a)(1) should be revised to clarify that the size of the proper shipping name marking is not prescribed by the regulations.

The intent of the proposed action was to clarify that IBCs that are labeled instead of placarded can be marked in accordance with the non-bulk size requirements in § 172.301(a)(1) consistent with international standards. As § 172.301(a)(1) does not prescribe a size requirement for the proper shipping name, only the UN identification number would need to meet the 12 mm requirement. In the § 172.514 preamble we inadvertently stated, “[I]n this rulemaking, we are proposing to clarify that the marking size requirement, for both the proper shipping name and identification number, is at least 12 mm (0.47 inch) for an IBC that is labeled instead of placarded.” We agree with the comments from DGAC, DOW, and URS; thus, in this final rule, PHMSA is revising § 172.514(c)(4) for clarity as suggested by both DGAC and DOW. As § 172.301(a)(1) does not impose a size requirement for a proper shipping name, the removal of the words “size requirements” from § 172.514(c) clarifies that the 12 mm (0.47 inch) size requirement prescribed in § 172.301(a)(1) applicable to UN identification numbers does not also

apply to the proper shipping name. The reduced minimum marking size will alleviate the existing discrepancy between §§ 172.514(c)(4) and 172.336(d) and decrease frustration of shippers by harmonizing with international regulations, thus ensuring IBCs marked in accordance with these regulations are consistent with the HMR.

### **Part 173**

#### *Section 173.4a*

Section 173.4a prescribes the requirements for excepted quantities of hazardous materials. The excepted quantities provisions were added to the HMR under an international harmonization final rule published on January 14, 2009 [Docket Nos. PHMSA-2007-0065 (HM-224D) and PHMSA-2008-0005 (HM-215)]; 74 FR 2254, effective February 13, 2009]. Excepted quantities provisions in § 173.4a are intended to be consistent with the existing exception in the ICAO TI. Paragraph (a) states that excepted quantities of materials other than articles transported in accordance with this section are not subject to any additional requirements of this subchapter except for. The language is unclear as to whether articles (including aerosols) may use the excepted quantities provisions. As a result, PHMSA is revising this paragraph to clarify that articles (including aerosols) are not eligible for excepted quantity reclassification under § 173.4a, although some aerosols are eligible to be shipped as small quantities by highway and rail in § 173.4. This will eliminate confusion as to the status of articles (including aerosols) in the context of this exception, while providing consistent language structure with Part 3, Chapter 5, Section 5.1 of the ICAO TI.

#### *Section 173.24a*

Section 173.24a prescribes additional general requirements for non-bulk packages. Paragraph (c)(1)(iv) provides the quantity limits for mixed contents packages (when multiple hazardous materials are packed within the same package) transported by aircraft. In this rulemaking, we are clarifying that the requirements provided in paragraph (c)(1)(iv) do not apply to limited quantity materials packaged in accordance with § 173.27(f)(2). This change is for clarification purposes only. Misapplication of § 173.24a(c)(1)(iv) would be duplicative and, in certain cases, would place unintended restrictions on the net quantity of hazardous materials per package.



### Section 173.27

Section 173.27 prescribes general requirements for the transportation of hazardous material by aircraft. Paragraph (f)(2) contains the provisions for limited quantities but does not expressly address limited quantity packages of mixed contents. PHMSA received a request for a letter of interpretation (Ref. No. 13–0094) to clarify, for transportation by aircraft, the applicable section to reference. Specifically, the requester asked whether Table 3 in § 173.27(f)(3) or the general provisions in § 173.24a(c)(1)(iv) should be used when determining the maximum net quantity of each inner and outer packaging for limited quantity packages of mixed contents. In response, we stated that, as provided in § 173.27(f)(2), when a limited quantity of a hazardous material is packaged in a combination packaging and is intended for transportation aboard an aircraft, the inner and outer packagings must both conform to the quantity limitations set forth in Table 3, which provides the maximum net quantity of each inner and outer packaging for materials authorized for transportation as a limited quantity by aircraft. For mixed contents of limited quantities by air, the shipper must comply with the maximum authorized net quantity of each outer package (Column 4 of 5 in Table 3) and ensure that the total net quantity does not exceed the lowest permitted maximum net quantity per package as shown by hazard class or division for the hazardous materials in the mixed contents package.

In this rulemaking, we are revising § 173.27(f)(2)(i) to clarify that the maximum net quantity for limited quantity packages of mixed contents must conform to the quantity limitations provided in Table 3 of § 173.27(f)(3). PHMSA received one comment from UPS providing support for this revision.

### Section 173.150

Section 173.150 provides exceptions for Class 3 (flammable and combustible liquid) hazardous materials. The requirements for combustible liquids in bulk packagings are found in § 173.150(f)(3). Although placarding under subpart F of part 172 is specified as a requirement in § 173.150(f)(3)(iv), registration requirements of § 107.601 are not included among the subject requirements. Given that § 173.150(f)(3) provides a list of subject requirements for combustible liquids in bulk packaging, PHMSA is revising this section through additions of a new subparagraph § 173.150(f)(3)(xi) stating that the registration requirements in

subpart G of part 107 are also applicable, for bulk packagings only. PHMSA is also revising § 173.150(f)(3)(ix) and (x) for punctuation applicable to the listing of requirements. PHMSA received one comment from ACA providing support for the amendments as proposed.

### Section 173.159

Section 173.159 prescribes requirements applicable to the transportation of electric storage batteries containing electrolyte acid or alkaline corrosive battery fluid (*i.e.*, wet batteries). This section outlines packaging requirements, exceptions for highway or rail transport, and tests that batteries must be capable of withstanding to be considered as non-spillable. However, there is no authorization to transport nor are there any requirements or instructions for shippers of damaged or leaking wet batteries on how to prepare these items for transport. PHMSA received a request for a letter of interpretation (Ref. No. 06–0031) to clarify whether a shipper of a damaged wet battery may utilize the exception from full regulation provided in § 173.159(e). In response, we stated that a damaged battery may be shipped in accordance with § 173.159(e) provided: (1) It has been drained of battery fluid to eliminate the potential for leakage during transportation; (2) it is repaired and/or packaged in such a manner that leakage of battery fluid is not likely to occur under conditions normally incident to transportation; or (3) the damaged or leaking battery is transported under the provisions of § 173.3(c).

PHMSA proposed adding a new paragraph (j) to § 173.159 to address this provision. However, a final rule published January 21, 2016 [Docket No. PHMSA–2013–0042 (HM–233F); 81 FR 3635] added a paragraph (j) to account for nickel cadmium batteries containing liquid potassium hydroxide. Therefore, all references to the previously proposed paragraph (j) will be to the new paragraph (k).

PHMSA received positive feedback from commenters with the ATA, the UPS, the USWAG, and Veolia voicing general support for this amendment. Veolia requested that “cargo vessel” be added as a mode of transportation; however, as this was not proposed and that inclusion would need an analysis from both PHMSA and the USCG, and we will not be authorizing vessel transportation in this final rule.

The Battery Council International (BCI) also commented on this provision. While they voiced strong support for the creation of a new paragraph to address

damaged wet batteries, they had concerns that the proposed regulatory text was unclear, did not take into account the industry standard, and may inadvertently eliminate existing exceptions for wet batteries. To supplement their comments, a meeting was requested by representatives of BCI with PHMSA to clarify their comments. Notes from that August 11 meeting can be found in the docket for this rulemaking. The BCI’s primary concern is that a different packaging method referenced in previous PHMSA letters of interpretation (Ref. Nos. 09–0227 and 06–0062) that utilizes leak-proof packaging in other than an intermediate/outer configuration (*i.e.*, single polyethylene bag) is absent from paragraph (j). BCI asserts that the single polyethylene bag method is sufficient to prevent leakage of the battery acid during transportation and that changing this standard industry practice will be highly disruptive, costly, and likely to result in considerable confusion. During the meeting, it emphasized that this was the predominant method of transporting damaged wet batteries by a vast majority of industry.

PHMSA agrees with BCI’s concerns and it was not our intent to undo progress made to address safety concerns by industry and PHMSA in the past by not allowing for this packaging configuration. Therefore, we are amending paragraph (k) (*i.e.*, previously proposed paragraph (j)) to allow for this packing method. PHMSA believes that public safety would be better served by allowing the use of a method that is known and widely used by industry, that has a strong safety record for transporting damaged wet batteries, and on which affected hazmat employees are trained. The BCI further points out confusion in the proposed regulatory text in paragraphs (j)(2) and (3), stating that it is unclear how a shipper could comply with the packaging requirement in § 173.159(j)(2) without also complying with § 173.159(j)(3). PHMSA agrees with this comment; although, paragraphs (j)(2) and (3) are intended to be used in tandem, they currently appear to be separate conditions for transport. Therefore, we are amending the regulatory text to consolidate the previously proposed (j)(2) and (3) into one paragraph, now (k)(2). Lastly, BCI requests that clarification be added to ensure that there is no confusion that the batteries shipped under this paragraph are still eligible to be shipped using the exception found in § 173.159(e). PHMSA agrees. It was never our intent to prohibit the use of this exception, and it was an oversight



in the NPRM not to specify this. Therefore, we are including a provision to clarify the eligibility of damaged wet batteries for exception under paragraph (e) when transported in accordance with § 173.159(k).

PHMSA is adding a new paragraph (k) in § 173.159 to address the need for provisions that allow shippers to prepare for transport and offer into transportation damaged wet electric storage batteries for purposes of recycling. Note that in addition to the conditions listed in paragraph (k), damaged wet electric storage batteries must also meet requirements of § 173.159(a).

PHMSA is reinserting language into § 173.159(e)(4) of the HMR indicating that the transport vehicle may not carry material shipped by any person other than the shipper of the batteries. This language was inadvertently deleted from the HMR when PHMSA published a final rule titled “Hazardous Materials: Reverse Logistics” under Docket HM-253 (81 FR 18527; March 31, 2016). As revised by HM-253, § 173.159(e)(4) now states that a carrier may accept shipments of batteries from multiple locations for the purpose of consolidating shipments of batteries for recycling, which creates confusion in the context of the section. The intent of the HM-253 final rule was to allow carriers to consolidate shipments of batteries from multiple locations for the purpose of recycling. To correct this inadvertent deletion, in this final rule we are revising § 173.159(e)(4) by retaining the previous text and providing a clear exception when batteries are consolidated for recycling.

#### Section 173.166

Section 173.166 prescribes requirements applicable to the transportation of safety devices. In a final rule published on July 30, 2013 [Docket No. PHMSA-2010-0201 (HM-254); 78 FR 45880], PHMSA revised the requirements applicable to these materials. Among the changes made was the adoption of Special Permit DOT-SP 12332 into the HMR. This special permit excepted Class 9 air bag inflators, air bag modules, or seat-belt pretensioners assigned to UN3268 from the requirement to provide the EX number (*i.e.*, the approval number) on the shipping paper.

Under § 173.166, paragraph (e)(6) authorizes packaging alternatives for air bag inflators, air bag modules, and seat-belt pretensioners that have been removed from, or were intended to be used in, a motor vehicle, as well as those devices that meet the requirements for use in the United

States and are being transported to recycling or waste disposal facilities. When adopted in HM-254, a provision in § 173.166(e)(6) stated “for domestic transportation by highway,” thereby limiting the use of this exception to ground transport, yet DOT-SP 12332 specifically permitted transport by “cargo vessel” as an authorized mode of transportation. For greater consistency with the special permit language adopted in HM-254, PHMSA is revising paragraph (e)(6) to add the words “or cargo vessel,” and as a result, PHMSA received one comment from Veolia providing support for this revision. Veolia noted that this revision will remove the administrative burden from both PHMSA and the Special Permit holders necessary for maintaining the special permit.

#### Sections 173.170 and 173.171

Sections 173.170 and 173.171 prescribe exceptions for the transportation of black powder for small arms classed as a Division 1.1 explosive and the transportation of smokeless powder for small arms classed as a Division 1.3 or Division 1.4 explosive. These exceptions permit these materials to be reclassified as Division 4.1 flammable solid material for domestic transportation. In both sections, the total quantity of black or smokeless powder for small arms is limited to 45.4 kg (100 pounds) net mass in a motor vehicle (other modes are authorized as well). PHMSA believes the exception should be updated to account for modern highway transportation. Currently, the HMR defines “motor vehicle” in § 171.8 to include a vehicle, machine, tractor, trailer, or semitrailer, or any combination thereof. The use of the term in this exception limits a carrier with multiple trailers to 100 pounds total of black or smokeless powder, reclassified as Division 4.1. Carriers who commonly transport double- or triple-trailer loads by highway may find it difficult to ensure that each trailer contains an amount of black or smokeless powder, reclassified as Division 4.1 that would keep the total quantity in all trailers under 100 pounds.

PHMSA believes the term “motor vehicle” should be replaced with “transport vehicle” in the context of this exception and that doing so will not decrease the level of safety for the transport of these materials. The term “transport vehicle” is defined in § 171.8 as a cargo-carrying vehicle, such as an automobile, van, tractor, truck, semitrailer, tank car, or rail car, used for the transportation of cargo by any mode. Each cargo-carrying body (a trailer, a rail car, etc.) is a separate transport vehicle.

Changing the term “motor vehicle” to “transport vehicle” would reflect a consistency in the ability to use exceptions for black or smokeless powder with the other modes, such as rail and vessel, whereby each rail car or freight container is permitted to have 100 pounds total.

In the NPRM, PHMSA solicited comment from stakeholders on this issue and requested any available data relating to incidents involving transport of black or smokeless powder for small arms reclassified as Division 4.1 by motor vehicle. PHMSA received four comments from ATA, DGAC, SAAMI, and UPS in support of this revision. The SAAMI, noted, “[w]e are aware of no incidents involving transporting black or smokeless powder for small arms reclassified as Division 4.1 by motor vehicle. These products are subject to a testing regime to ensure that they meet the rigid requirements for transport as a flammable solid.” Thus, in this final rule, PHMSA is revising §§ 173.170 and 173.171 as proposed in the January 23, 2015 NPRM to replace the term “motor vehicle” with “transport vehicle.”

#### Section 173.199

Section 173.199 prescribes the packaging requirements for Category B infectious substances. Paragraph (a)(4) of this section requires that the packaging be capable of successfully passing the drop test in § 178.609(d) and the steel rod impact test in § 178.609(h) at a drop height of at least 1.2 meters (3.9 feet).

PHMSA received a request for a letter of interpretation (Ref. No. 07-0018) regarding the test requirements in § 173.199(a)(4). The request pointed out that in the preamble to the final rule published on June 2, 2006 [Docket No. PHMSA-2004-16895 (HM-226A); 71 FR 32244] states that Category B packagings must be capable of passing a drop test, but need not be capable of passing a puncture or other performance test. The requester asked if the regulatory text requiring the steel rod impact test for this packaging was an error.

As we clarified in our response, PHMSA did not intend to require the steel rod impact test in § 178.609(h) for a packaging used to transport a Category B infectious substance. Therefore, in this rulemaking, we are revising the provisions in § 173.199(a)(4) by removing the reference to the steel rod impact test in § 178.609(h).

#### Section 173.216

Section 173.216 establishes the transportation requirements for asbestos. Paragraph (c) of this section

provides packaging requirements for asbestos including both “bulk” and “non-bulk” packaging options.

PHMSA received a request for a letter of interpretation (Ref. No. 11–0169) regarding the applicability of bulk and non-bulk packaging instructions for asbestos. The letter expressed confusion regarding whether § 173.216 should apply to both “bulk” and “non-bulk” packages of asbestos, because as the requester noted in the letter, the § 172.101 HMT entry for “Asbestos,” NA2212 refers to packaging instructions specified in § 173.216 for non-bulk packaging requirements and § 173.240 for bulk packaging requirements. It was also noted in the letter that some of the packaging options specified in § 173.216 are considered bulk packagings.

PHMSA acknowledged that some of the packaging options provided in § 173.216(c) meet the bulk packaging definition specified in § 171.8 and, therefore, would be considered a bulk packaging for transportation purposes. In this rulemaking, we are revising the bulk packaging section reference in Column (8C) of the HMT to add a reference to “216” for the table entries associated with the following identification numbers: NA2212, UN2212, and UN2590. This revision will: (1) Eliminate the confusion pertaining to authorized bulk packaging specifications contained in a section previously only referenced in the authorized non-bulk Column (8B) of HMT and (2) allow for the continued use of bulk packages in § 173.240.

#### Section 173.225

Section 173.225 contains the packaging requirements and other provisions applicable to the transportation of organic peroxides. Paragraph (d) of this section contains the Packing Method table, which provides packagings authorized for organic peroxides and the maximum quantity permitted in each package or packaging. The table is missing pertinent information, so PHMSA is revising the table to add a reference to Note 1 for OP2, which states that if two values are given, the first applies to the maximum net mass per inner packaging and the second to the maximum net mass of the complete package. Additionally, PHMSA is revising the maximum quantity for solids and combination packagings (liquid and solid) for OP4 to read as “5/25” kg instead of only “5.”

#### Section 173.301

Section 173.301 applies to general requirements for shipment of compressed gases and other hazardous

materials in cylinders, UN pressure receptacles, and spherical pressure vessels. Paragraph (g) of this section describes the requirements to manifold cylinders in transportation. A manifold system is a single pipe or chamber connected to a group of cylinders, which allows for a single point of loading and unloading.

Incidents investigated by the NTSB have highlighted potential risks when transporting manifolded acetylene trailers.<sup>3</sup> These incidents included overturned vehicles and two unloading releases. As a result of the impact caused by ejection of the cylinders from the vehicle during overturn incidents, cylinders have shown signs of broken valves, burst heads, burst walls, as well as bulging and denting of the walls. The impact resulting from the ejection of the cylinders from the vehicle also can cause the valves to break, which may ignite the acetylene. The NTSB’s investigation also concluded that the unloading sequence is occasionally done out of order from what is specified in the standard operating procedures and that this can be a contributing factor to incidents.

The NTSB has issued two Safety Recommendations<sup>4</sup> to PHMSA based on recent incidents involving manifolded acetylene trailers:

H–09–01: Modify 49 CFR 173.301 to clearly require (1) that cylinders be securely mounted on mobile acetylene trailers and other trailers with manifolded cylinders to reduce the likelihood of cylinders being ejected during an accident and (2) that the cylinder valves, piping, and fittings be protected from multidirectional impact forces that are likely to occur during highway accidents, including rollovers.

H–09–02: Require fail-safe equipment that ensures that operators of mobile acetylene trailers can perform unloading procedures only correctly and in sequence.

Given the results of the NTSB investigations, as well as the associated safety risks of mobile acetylene trailer overturns and unloading operations, PHMSA proposed in the NPRM to incorporate by reference in § 171.7 of the HMR the CGA G–1.6–2011, *Standard for Mobile Acetylene Trailer Systems*, Seventh Edition, copyright 2011. CGA G–1.6 would serve to address the NTSB Safety Recommendations specific to mobile acetylene trailers. This pamphlet was updated by the CGA with input from both PHMSA and the industry to address cylinder securement under

<sup>3</sup> <https://www.nts.gov/doclib/safetystudies/SIR0901.pdf>.

<sup>4</sup> [http://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/NTSB%20Files/H\\_09\\_1\\_2\\_Original.pdf](http://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/NTSB%20Files/H_09_1_2_Original.pdf).

accident conditions, valve protection from multidirectional impact forces, and unloading procedures specific to mobile acetylene trailers.

Specifically, PHMSA proposed to incorporate the CGA pamphlet into § 171.7 and to revise § 173.301(g)(1)(iii) to indicate that mobile acetylene trailers must be maintained, operated, and transported in accordance with CGA Pamphlet G–1.6. In addition, PHMSA sought specific comment on the inclusion of CGA Technical Bulletin (TB) TB–25 to address structural integrity requirements. PHMSA also proposed to revise § 177.840 by adding paragraph (a)(3) to state that cylinders containing acetylene and manifolded as part of a mobile acetylene trailer system must be transported in accordance with § 173.301(g) to ensure that this requirement is addressed in the carriage by highway portion of the HMR.

PHMSA received two comments on this provision. The CGA, who petitioned to incorporate by reference CGA Pamphlet G–1.6, stated continued support for the adoption of this provision. Additionally, they comment that TB–25 ought not to be included in the adopted regulations, stating that it would be incorrectly applied. TB–25 addresses tubes that are mounted horizontally on a trailer chassis whereas acetylene cylinders are required to be mounted vertically with individual valve protection. Thus, while tubes are permanently mounted onto a trailer chassis, acetylene cylinders are not permanently attached to the trailer to allow for periodic maintenance (*i.e.*, resolventing).

In its comment, the NTSB agrees with PHMSA’s intent to address mobile acetylene trailers but states that CGA Pamphlet G–1.6 does not fully address accident impact protection from multidirectional forces that are likely to be encountered during highway accidents, including rollover. Additionally, they believe TB–25 should be included to address manifolded acetylene cylinders and state that a revision to TB–25 to include vertically-mounted, manifolded cylinders would provide a standard for accurate and verifiable performance testing, analytical methods, or a combination thereof, to prove the adequacy of mobile acetylene trailer designs in both normal operation and accident conditions. The NTSB also disagrees with PHMSA that the proposed changes address cylinder securement, vehicle accident impact, or rollover protection as recommended in Safety Recommendation H–09–01. Lastly, it states that CGA Pamphlet G–1.6 does not mandate operator

equipment that would require them to perform unloading procedures in the correct sequence and that it only requires that instructions are readily available to the operator.

PHMSA appreciates both CGA and NTSB's comments on this provision. We recognize NTSB's concerns regarding the nature of its recommendations and what was proposed in the NPRM. Its comments demonstrate that further examination of this issue regarding performance in accident conditions is necessary. While we cannot adopt additional provisions at this time as they are beyond the scope of this rulemaking, we will work with both the NTSB and the CGA to address remaining concerns and additional action may be taken in a future rulemaking. However, at this time PHMSA is adopting as proposed the incorporation by reference of CGA Pamphlet G-1.6.

#### Section 173.306

Section 173.306 provides exceptions from the HMR for compressed gases, including aerosols, when transported in limited quantities. In a final rule published May 14, 2010 [Docket No. PHMSA-2009-0289 (HM-233A); 75 FR 27205], PHMSA added a new paragraph (k) to § 173.306 adopting provisions from DOT-SP 12842. These provisions authorized an increase in gross weight per package for the purpose of packaging discarded empty, partially used, and full aerosol containers to be transported to a recycling or disposal facility.

PHMSA received a request for a letter of interpretation (Ref. No. 12-0004) seeking confirmation that aerosols shipped for disposal or recycling in compliance with § 173.306(k) are permitted the same exceptions (*i.e.*, the marking and labeling requirements of part 172, subparts D and E, respectively, and shipping paper requirements, unless it is a hazardous waste or hazardous substance, of part 172, subpart C) granted under §§ 173.306(i) and 173.156(b) without being reclassified as an ORM-D material. The requester also pointed out that under DOT-SP 12842, aerosols shipped for disposal or recycling were excepted from the marking, labeling, and shipping paper requirements, unless they were considered a hazardous waste or hazardous substance, without being reclassified as an ORM-D material.

In response to the NPRM, PHMSA received three comments on this proposed change. Two commenters, the USWAG and Veolia voiced general support for the revision. However, both Veolia and ACA noted a mistake in the

preamble language of the NPRM and believe the applicable marking section referenced in the discussion was in error and should be § 172.315(a)—for modes other than air transport, not paragraph (b). Though, Veolia does note that the proposed revised text included by PHMSA in § 173.306(k)(3) is correct by referencing § 172.315(a). PHMSA appreciates the comment from Veolia and agrees that they are correct. Additionally, in its comment, ACA questions the need for the proposed marking requirement in § 173.306(k)(4) requiring that limited quantity packages containing aerosols for recycling or disposal conforming to the provisions of paragraph (a)(3), (a)(5), or (b)(1) must also be marked “INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS” in addition to marking in accordance with § 172.315(a). The ACA commented that the “INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS” marking is explicitly not required by § 173.306(i) and therefore an original (not for recycling or disposal) shipment of aerosols meeting the requirements of a limited quantity is not required to be marked “INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS”. The ACA contends that when an aerosol is ready for disposal or recycling it is presumably empty or less than full and that the risk is lower, and as such, it questions the need for this additional marking. The ACA commented that this situation is somewhat confusing and will likely lead to mistakes and in addition, will require shippers of aerosols to stock two different boxes or a roll of labels for the disposal or recycling shipments, incurring additional costs for very low-risk commodities.

PHMSA agrees that the proposed marking of packages with “INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS” is not necessary, as the presence of a § 172.315(a) limited quantity mark on a package prepared in accordance with § 172.306(k) sufficiently communicates conformance with applicable requirements, and although PHMSA does not necessarily agree that the risk of empty or partially full aerosols is lower due to the much larger quantity authorized per package (*i.e.*, 500 kg gross) compared to the standard limitation of 30 kg gross, we believe the safety concern of the larger quantity is offset by the conditions of the exception in § 172.306(k), specifically, protecting or removing the valve stem of the aerosols and limiting carriage to private or contract carriers, or under exclusive

use service by common carriers. The former protects against the release of contents and while the latter prevents introduction into common transportation channels where transport personnel do not have as much expertise and knowledge of the package and its contents. Therefore, in this rulemaking, we are revising § 173.306(k) by clarifying that aerosols shipped for recycling or disposal by motor vehicle, under the specific conditions provided in § 173.306(k), are afforded the applicable exceptions provided for ORM-D materials granted under §§ 173.306(i) and 173.156(b). In addition, § 173.306(k) packages must be marked in accordance with § 172.315(a).

#### Sections 173.314(h) and 173.315(b)(1)

Section 173.314 establishes requirements for compressed gases in tank cars and multi-unit tank cars, and § 173.315 establishes requirements for compressed gases in cargo tanks and portable tanks. PHMSA is aware of several incidents possibly attributed to either the under-odorization or odorant fade of LPG. Although not transportation related, most notable of these incidents is one that happened in Norfolk, MA on July 30, 2010, where an explosion occurred at a residential condominium complex that was under construction. Emergency responders from 21 cities and towns deployed personnel to the accident site. The accident resulted in seven injuries and one fatality.

The subsequent investigation raised questions as to whether there was a sufficient level of odorant in the LPG contained in the on-site storage tanks. In accordance with Federal and State laws and regulations, LPG intended for use by non-industrial entities is generally required to be odorized, or stented, to enable the detection of any unintended release or leak of the gas. LPG is highly flammable, and is dangerous to inhale in large quantities; thus the addition of an odorant is a safety precaution that helps warn those in the area that a release of gas has occurred. In the Norfolk incident, there was no noticeable evidence of odorant that would indicate a leaking. PHMSA has consulted with stakeholders from industry, fire fighter associations, and other regulatory agencies in order to better understand the root cause of incidents like the one in Norfolk. Although additional research may be necessary in order to come to more definitive conclusions, PHMSA has identified the following situations in which the risks of under-odorization or odorant fade are more likely to occur:

*Injection Process:* On December 13, 2012, PHMSA met with representatives from the NPGA to gain a better understanding of the LPG odorization process. During this meeting, representatives from the NPGA stated that the most common method for the odorization of LPG is through an automated system. However, the NPGA also noted there are situations where the odorization process is manually performed. Preliminary investigations into the Norfolk, MA incident suggest that the lack of sufficient odorization rendered the LPG undetectable when the on-site storage tank began to leak. In situations where the injection process is not fully automated, the potential for human error may increase the possibility of under-odorization. We believe that the insufficient level of odorant in the LPG contained in the on-site storage tank involved in the Norfolk, MA incident was likely a major contributing factor in limiting the ability of on-site personnel to readily detect the leak.

*New Tanks or Freshly Cleaned Tanks:* During our meetings with various stakeholders, several indicated that a phenomenon known as “odor fade” may be a problem when new or recently cleaned tanks are used. New or recently cleaned tanks may absorb the odorant into the metal shell of these tanks leading to an “odorant fade,” thus limiting the effectiveness of the remaining odorant in the LPG.

*Odorization Standards:* The odorization of LPG is addressed by Federal and State laws and regulations, as well as by generally accepted industry standards and practices. When offered and transported in commerce, the HMR specifies that all LPG in cargo and portable tanks be effectively odorized using either 1.0 pound of ethyl mercaptan, 1.0 pound of thiophane, or 1.4 pounds of amyl mercaptan per 10,000 gallons of LPG, in the event of an unintended release or leak to indicate the presence of gas. The HMR does not, however, require LPG to be odorized if odorization would be harmful in the use or further processing of the LPG, or if odorization will serve no useful purpose as a warning agent in such use or further processing. Essentially, this exception applies to LPG being transported to industrial end-users.

In response to the NPRM, PHMSA received comments from the Massachusetts Department of Fire Services, the NASFM, the NTSB, the IAFC, the NPGA, Trammo Inc., and the New Hampshire Office of the State Fire Marshall on the proposed odorization requirements. All of the commenters

supported the development of an odorization standard for rail tank cars as it exists for cargo tanks and portable tanks. Additionally, support for qualitative testing to address under-odorization or odorant fade was voiced.

The Massachusetts Department of Fire Services generally support PHMSA’s proposal to address odorization of LPG in both cylinders and rail cars, as well as the creation of a performance standard to address issues of under-odorization and odorant fade of LPG in transportation. They believe that the proposals could be strengthened in two ways: (1) Mandate qualitative testing equivalent to the Code of Massachusetts Regulations, which specifies the tests that can be used to satisfy this requirement; and (2) mandate recordkeeping requirements that can be made available upon request. Records should include: The process of odorization, testing and test results, and if necessary, remediation by injection of additional odorant. The odorization in cylinders is not being adopted as proposed. While PHMSA appreciates the prescriptive additional requirements for odorization offered in the comment from the Massachusetts Department of Fire Services we disagree with specifying the tests that can be used and requiring recordkeeping. These measures were not proposed in the NPRM and PHMSA sees specifying the tests as a limiting factor to addressing odorization qualitative testing. While we do not take issue with using the tests outlined in the Code of Massachusetts Regulations, we are not prescribing specific tests. In addition, the requirement for recordkeeping was not proposed in the NPRM, so obligatory paperwork burdens were not accounted for: PHMSA is required by Federal law to reduce the paperwork burdens it imposes on private citizens and businesses. Accordingly, we do not agree that the safety benefits achieved by requiring recordkeeping are justified. These comments by the Massachusetts Department of Fire Services were echoed by the NASFM, the IAFC, and the New Hampshire Office of the State Fire Marshall.

As discussed in the section referencing the Provisions Not Adopted in This Final Rule, the NPGA opposed an odorization testing requirement for cylinders and cargo tanks. Although PHMSA disagrees with NPGA that cargo tanks should be excluded from the requirements to address odorant fade or under-odorization, we agree with its comment that it should be addressed “upstream” in transportation. Therefore, we are only applying the revised text in § 173.315(b)(1) to cargo tanks and

portable tanks being offered for transport from a refinery, gas plant, or pipeline terminal.

The NPGA also provided suggestions to improve the proposed § 173.314(h) language. It suggests deleting the references to thiophane and amyl mercaptan as these materials are no longer used as odorant in LPG. PHMSA agrees with this comment and will remove those references. Due to universal support by commenters for requiring an odorant performance standard as well as measures to address odorant fade and under-odorization in rail tank car tanks, we are adopting new § 173.314(h) provisions with minor changes.

Trammo Inc. generally supported the proposed changes, but expressed concern about the odorization requirements regarding exporting propane. They note that odorized propane cannot be shipped internationally because it may be sold for industrial purposes for which odorization may be harmful, and that a small specialized fleet of refrigerated gas carriers refuse to carry odorized products because of persistent cargo residue and contamination. Trammo Inc. notes that receiving odorized propane would have negative consequences for the company and its customers. PHMSA notes these concerns; however, PHMSA points out that §§ 173.314(h) and 173.315(b)(1) provide an exception that addresses this scenario indicating that odorization is not required if harmful in the use or further processing of the liquefied petroleum gas or if odorization will serve no useful purpose as a warning agent in such use or further processing. This exception would apply to the exportation and further distribution of liquefied propane gas internationally if it cannot be offered as odorized.

## Part 175

### Sections 175.1 and 175.9

Section 175.1 describes the purpose, scope, and applicability of part 175 to air operations, specifically, the transportation of hazardous materials in commerce by air. Section 175.9 provides exceptions from regulation under the HMR for certain special aircraft operations. Specifically, paragraph (b)(4) of § 175.9 excepts hazardous materials carried and used during dedicated air ambulance, firefighting, or search and rescue operations. To clarify that these operations are not subject to the HMR when in compliance with applicable Federal Aviation Regulations (FAR; 14 CFR) and any additional Federal Aviation Administration (FAA)

requirements, PHMSA is adding a new paragraph (d) in § 175.1 stating that the HMR does not apply to dedicated air ambulance, firefighting, or search and rescue operations. This will eliminate any confusion that these air operations would otherwise be subject to requirements in the HMR (*e.g.*, passenger notification requirements). PHMSA is also removing § 175.9(b)(4) for consistency.

As with other conditional exceptions to the HMR, non-compliance with the FAR could subject operators to enforcement under the HMR, but PHMSA does not anticipate any adverse safety consequences with this proposed revision due to the existing training requirements in the FAR on the proper handling and stowage of hazardous materials carried onboard aircraft.

The FAA and PHMSA recognize that certain operators do not solely utilize their aircraft for purposes under § 175.9(b)(4). Normal transport operations (*i.e.*, the transport of passengers or cargo not required for performance of, or associated with, the specialized emergency function) would continue to be subject to the HMR. However, staging operations and other operations related to dedicated air ambulance, firefighting, or search and rescue operations are intended to be excepted from the HMR when in compliance with the FAR. We note the following definitions in FAA Order 8900.1 (Vol. 3, Chapter 14, Section 1, 3–529(C)):

(1) Firefighting. This term includes the drop of fire retardants, water, and smoke jumpers. It also includes the transport of firefighters and equipment to a fire or to a base camp from which they would be dispersed to conduct the firefighting activities.

(2) Search and Rescue. Search and rescue is a term of art meaning aircraft operations that are flown to locate people who cannot be located from the ground. The term includes operations where the aircraft is indispensable to the search, or is the only feasible means of reaching the victim. Victims would be considered to be “associated with” the search and rescue operation. The term “search and rescue” does not include routine medical evacuation of persons due to traffic accidents and other similar incidents.

Air ambulance operators are required by the FAR to utilize either Operational Specification (OpSpec) A021 (Helicopter Emergency Medical Services (HEMS) Operations) or A024 (Air Ambulance Operations—Airplane) and must obtain and adhere to the appropriate OpSpec to be excepted from the HMR.

#### Section 175.8

Section 175.8 provides exceptions from certain regulations for air carrier operator equipment and items of replacement. Paragraph (b)(1) provides that oxygen, or any hazardous material used for the generation of oxygen, for medical use by a passenger, which is furnished by the aircraft operator in accordance with certain FAR (14 CFR) requirements is not subject to the requirements of the HMR. The provisions of the FAR, at § 125.219, Oxygen for medical use by passengers, was inadvertently left out of paragraph (b)(1). In this rulemaking, we are revising paragraph (b)(1) by adding the appropriate FAR, part 125 citation.

#### Section 175.10

Section 175.10 provides exceptions for passengers, crewmembers, and air operators. Paragraph (a) of this section lists a number of hazardous materials that are permitted for carriage by passengers or crewmembers provided the requirements of §§ 171.15 and 171.16 and the conditions of this section are met. PHMSA is proposing revisions to some of these provisions to promote clarity.

In paragraph (a)(6), hair curlers (curling irons) containing a hydrocarbon gas, such as butane, and carried in carry-on or checked baggage, are excepted from the requirements of the HMR. However, gas refills for such curlers are not permitted in carry-on or checked baggage. In this final rule, PHMSA is prohibiting such hair curlers in checked baggage due to the risk posed by flammable gases in an inaccessible compartment on a passenger-carrying aircraft. Flammable gases will burn if mixed with an appropriate amount of air and confined burning of a flammable gas can lead to detonation. As a result, we remain concerned with the flammability hazard posed by butane and other flammable gases and the ability of such gases to propagate or contribute to a fire in the cargo compartment of an aircraft. This concern is particularly relevant to carriage in checked baggage, where damage to the curling iron and the subsequent release of a flammable gas may occur if the baggage is mishandled or the article itself is compromised.

Because of the risks posed by flammable gas, a number of safety requirements apply to cargo shipments of flammable gas on passenger-carrying aircraft. Most Division 2.1 flammable gas substances and articles are generally forbidden from transportation as cargo aboard passenger-carrying aircraft, and PHMSA’s prohibition of the carriage of

butane-powered curling irons in checked baggage is consistent with this provision. In the area of aviation safety, where the high volume of travel and the catastrophic consequences of failure lead to a very low tolerance for risk, we firmly believe the known risks of flammable gas are sufficient basis for our decision. In the NPRM, we solicited public comment on any impact our proposed action may impose upon passengers, crew members, and air operators; however, PHMSA did not receive any comments.

In paragraph (a)(22) of this section, non-infectious specimens transported in accordance with § 173.4b(b) (de minimus quantities) are permitted for carriage by passengers or crewmembers. PHMSA is clarifying this exception to include the phrase “in preservative solutions” to clarify the intended use of this exception. Non-infectious substances would not be subject to the HMR if they did not otherwise meet the definition of any other hazard classes. This clarification signals that the exception refers to specimens in solutions that may contain preservatives that are hazardous materials, such as formaldehyde and alcohol solutions.

Additionally, PHMSA is revising paragraph (a)(24) of this section, which refers to small cartridges of carbon dioxide or other suitable gas of Division 2.2. The exception states that small cartridges fitted into devices with no more than four small cartridges are permitted. This is inconsistent with the ICAO TI, which permits cartridges for other devices indicating that spares are permitted. As § 175.10(a)(24) currently reads, there is no mention of spare cartridges. The HMR currently permits up to four small cartridges, and therefore, PHMSA is revising this paragraph to state that small cartridges fitted into or securely packed with devices with no more than four small cylinders of carbon dioxide or other suitable gas in Division 2.2 are permitted for carriage by passengers or crewmembers. This change harmonizes the exception with international standards to clarify that spares are permitted in addition to the cartridges already fitted into the device, provided they are securely packed with the devices for intended use.

#### Section 175.75

Section 175.75 describes the quantity limitations and cargo locations for carriage by aircraft. Paragraph (e)(2) excepts packages of hazardous materials transported aboard a cargo aircraft, when other means of transportation are impracticable or not available, in accordance with procedures approved

in writing by the FAA Regional or Field Security Office in the region where the operator is located, from the requirements of paragraphs (c) and (d) of § 175.75. PHMSA is revising this paragraph by removing the word “located” and replacing it with “certificated.” The words “or Field Security” are also removed. This amendment ensures that operators interact with the Hazardous Materials Division Manager (HMDM) who has already reviewed and recommended for approval the certificate’s hazmat-related manual(s) required under FAR § 121.135. The HMDM (or designee) will already have an understanding of the certificate’s operations and, as needed, will interact with the local resources and/or the operator’s certificate management team to assess the impracticability or lack of availability of other cargo operations—as well as what alternative procedures should be prescribed.

#### Part 176

##### Section 176.30

Section 176.30 prescribes the information required on dangerous cargo manifests for vessel transport. Paragraph (a)(4) requires “the number and description of packages (e.g., barrels, drums, cylinders, boxes, etc.) and gross weight for each type of packaging.” In this final rule, PHMSA is replacing the word “packaging” with “package,” as the term “packaging” refers to the means of containment and not the completed package.

#### Part 177

##### Section 177.834

Section 177.834 establishes general operational requirements for hazardous materials transportation by highway. Section 177.934(i) prescribes attendance requirements for loading and unloading operations. In a final rule published on January 21, 2016 [Docket No. PHMSA–2013–0042 (HM–233F); 81 FR 3635], PHMSA codified DOT Special Permits 9874, 13190, 13424, 13959, 14141, 14150, 14680, 14822, 14827, and 14840 into § 177.834(i) that authorize “attendance” of the loading or unloading of a cargo tank by a qualified person observing all loading or unloading operations by means of video cameras and monitors or instrumentation and signaling systems such as sensors, alarms, and electronic surveillance equipment located at a remote control station. In the same final rule, PHMSA codified DOT Special Permits 13484 and 14447 also into § 177.834(i) that authorize “attendance” of the loading or unloading of a cargo

tank through the use of hoses equipped with cable connected wedges, plungers, or flapper valves located at each end of the hose, able to stop the flow of product from both the source and the receiving tank within one second without human intervention in the event of a hose rupture, disconnection, or separation. The SPs prescribe inspection requirements and operational controls for use of the hoses. In the final rule, however, PHMSA inadvertently omitted the word “or” between each of the four acceptable methods of determining compliance with the attendance requirements adopted by the codification of the 12 special permits. Thus, in this final rule, PHMSA is inserting the word “or” between each acceptable method in § 177.834(i) as proposed in the January 30, 2015 NPRM.

##### Section 177.848

Section 177.848 addresses segregation requirements for hazardous materials transported by motor carrier. PHMSA received a request for a letter of interpretation (Ref. No. 09–0268) requesting clarification whether “Boosters, 1.1D, UN0042, PG II” and “Ammonium nitrate, 5.1, UN1942, PG III” can be transported in the same vehicle. The requester noted seemingly conflicting requirements in §§ 177.835 and 177.848 applicable to the segregation of ammonium nitrate fertilizer and explosive materials.

Section 177.848(e) provides instructions for using the segregation table in § 177.848(d). Presently, under § 177.848(e)(5) assignment of note “A” authorizes ammonium nitrate (UN1942) and ammonium nitrate fertilizer to be loaded or stored with Division 1.1 or Division 1.5 (explosive) materials. However, § 177.835(c) provides that Division 1.1 or 1.2 (explosive) materials may not be loaded into or carried on any vehicle or a combination of vehicles under certain conditions outlined in paragraphs (c)(1) through (4). PHMSA clarified in the response letter that a Division 1.1 or 1.2 explosive may not be loaded into or carried on any vehicle or a combination of vehicles that does not conform to §§ 177.835(c)(1) through (4), regardless of the note “A” exception for UN1942 in § 177.848(e)(5). In this rulemaking, we are clarifying that the loading restrictions in § 177.835(c)(1) through (4) are applicable to § 177.848(e).

#### Part 178

##### Section 178.65

Section 178.65 applies to the manufacture of DOT Specification 39

non-reusable (non-refillable) cylinders. Paragraph (i) of this section describes the required markings for DOT 39 cylinders. The reference to § 178.35(h) in § 178.65(i)(1) is incorrect, as § 178.35(h) was removed under a final rule published July 20, 2011 [Docket No. PHMSA–2009–0151 (HM–218F); 76 FR 43509], which consolidated the inspector’s report requirements found in § 178.35(g) into paragraph (c)(4) of that section, moved the manufacturer’s report retention requirements into paragraph (g) and removed paragraph (h). In this final rule, PHMSA is revising § 178.65(i)(1) to correctly reference the manufacturer’s report requirements in § 178.35(g).

##### Section 178.337–17

Section 178.337–17 prescribes the marking requirements applicable to MC 331 cargo tank motor vehicles. Paragraph (a) of this section outlines general requirements for marking of MC 331 cargo tank motor vehicles. PHMSA received a request for a letter of interpretation (Ref. No. 04–0206) to clarify the applicability of these markings in § 178.337–17(a). The request pointed out an incorrect use of the term cargo tank as it applies to the requirement for specification plates found in paragraph (a), which states that each cargo tank certified after October 1, 2004 must have a corrosion-resistant metal name plate (ASME Plate) and specification plate permanently attached to the cargo tank by brazing, welding or other suitable means on the left side near the front, in a place accessible for inspection.

In response, we stated that an MC 331 cargo tank must have a metal name plate (also referred to as an ASME plate) permanently attached to the cargo tank. In addition, an MC 331 cargo tank motor vehicle certified after October 1, 2004, must have a specification plate that includes the information specified in § 178.337–17(c). In this final rule, PHMSA is revising § 178.337–17(a) to eliminate confusion of the name plate and specification plate requirements.

##### Section 178.345–3

Section 178.345–3 prescribes general requirements for the structural integrity of specification cargo tanks. Paragraph (c)(1) of this section addresses stress in the cargo tank shell resulting from normal operating loadings. PHMSA published a final rule on October 2, 2013 [Docket No. PHMSA–2013–0158 (HM–244F); 78 FR 60745; effective October 1, 2013] intending to correct the formula presented in paragraph (c)(1) for the figure “S<sub>s</sub>2” to read “SS<sup>2</sup>.” This correction correctly adjusted the

standard “2” in the term to be a superscript “2” but inadvertently adjusted the second “S” from a subscript “s” to a standard “S.” This is incorrect, and in this final rule, PHMSA is revising this portion of the formula in § 178.345–3(c)(1) to read “S<sub>2</sub>”.

#### Section 178.955

Section 178.955 prescribes the design and testing criteria for Large Packagings. Presently, if a manufacturer of a Large Packaging wishes to construct a Large Packaging that differs from a listed specification, there is no Associate Administrator approval provision outlined in the HMR. However, the HMR alludes to the need for an approval in the Large Packaging marking requirements in § 178.910(a)(1)(ii). The HMR have approval provisions in Part 178 for manufacturers of both non-bulk packagings and IBCs when constructing packagings that differ from listed specifications. In this rulemaking, we are proposing to include provisions consistent with the non-bulk packaging and IBC approval provisions for Large Packagings in § 178.955. Such Large Packagings must be shown to be equally as effective, and the testing methods used must be equivalent. This change resolves the issue with § 178.910(a)(1)(ii) and is consistent with both the UN Model Regulations and the IMDG Code, which prescribe approval provisions for non-bulk packagings, IBCs, and Large Packagings.

#### Part 179

##### Section 179.13

Section 179.13 includes limitations on rail tank car capacity and gross weight. With certain exceptions, this section generally limits the gross weight on rail of tank cars to 263,000 pounds. However, this section has been revised numerous times over the last several years. On January 13, 2009 [74 FR 1770], PHMSA added paragraph (b) to this section authorizing tank cars designed to transport poisonous-by-inhalation (PIH) materials and built with certain mandated safety improvements (tank cars meeting the specifications of § 173.244(a)(2) or (3) or § 173.314(c) or (d)) to have a gross weight on rail of up to 286,000 pounds provided any weight increase was not used to increase product capacity. Subsequently, in an effort to incorporate several widely used special permits providing relief from the gross weight limitations of § 179.13, PHMSA revised the section on May 14, 2010 [75 FR 27205], to provide FRA with the authority to approve the operation of tank cars containing materials other than PIH materials at

gross weights of up to 286,000 pounds. FRA published notice of its approvals under this section on January 25, 2011 [76 FR 4250].

In 2011 [76 FR 51324; 51331], noting that the agency’s stated intent in the 2010 rule was to incorporate into the HMR existing special permits related to tank car gross weight for tank cars carrying both non-PIH materials and PIH materials by giving FRA authority to approve tank car weights up to 286,000 pounds for both types of tank cars, PHMSA proposed to revise § 179.13 to correct the omission of PIH material tank cars from FRA’s approval authority. However, when adopted as a final rule on June 25, 2012 [(HM–216B); 77 FR 37962; 37985], the regulatory language did not correct this inadvertent omission. Instead, in the final HM–216B rule, § 179.13 was revised to provide that tank cars designed to transport PIH materials and built with the required safety improvements set forth in § 173.244(a)(2) or (3) or § 173.314(c) or (d) “may have a gross weight on rail of up to 286,000 pounds upon approval by the Associate Administrator for Railroad Safety, FRA.”

As clearly demonstrated by the 2009 and 2010 rules, it was not the intent of either PHMSA or FRA to require FRA approval of tank cars built to the enhanced standards of §§ 173.244(a)(2) or (3) or 173.314(c) or (d) for those cars to operate at a gross rail load of 286,000 pounds. Accordingly, in this final rule PHMSA is revising § 179.13 to correct this error by (1) making it clear that tank cars containing PIH materials built to the enhanced standards of § 173.244(a)(2) or (3) or § 173.314(c) or (d) do not need FRA approval to operate at gross rail loads of up to 286,000 pounds and (2) providing for FRA approval of tank cars containing PIH materials that do not meet the enhanced standards to operate at gross rail loads of up to 286,000 pounds. PHMSA received one comment from The Chlorine Institute in support of this revision.

#### Part 180

##### Section 180.209

Section 180.209 prescribes requalification requirements for DOT specification cylinders. Paragraph (j) contains a reference to an obsolete special provision. In a January 7, 2013 final rule [Docket No. PHMSA–2009–0126 (HM–215K); 78 FR 1101], we removed and relocated regulatory text from § 172.102(c)(1) Special Provision 18 to § 173.309(a), which prescribes the conditions when specification cylinders may be described, offered, and

transported in commerce as fire extinguishers. In relocating the text, PHMSA did not update this section to reflect the change. In this final rule, we are correcting this inconsistency by replacing the reference to § 172.102(c)(1) Special Provision 18 with § 173.309(a).

#### V. Regulatory Analyses and Notices

##### A. Statutory/Legal Authority for This Rulemaking

The Federal Hazardous Materials Transportation Law (49 U.S.C. 5101–5128) authorizes the Secretary of Transportation (Secretary) to “prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.” The Secretary delegated this authority to PHMSA in 49 CFR 1.97(b). If adopted as proposed, this final rule would make miscellaneous amendments to the HMR, correct errors in the § 172.101 HMT and corresponding special provisions, and respond to NTSB Safety Recommendations related to the safe transportation of manifolded acetylene cylinders.

Additionally, this final rule will respond to petitions for rulemaking related to the allowable format for emergency telephone numbers on shipping papers; relax the pressure test interval for certain cargo tanks in dedicated propane service; enhance the safe packaging for nitric acid; clarify the testing requirements for specification cargo tank pressure relief devices; harmonize the hazard communication requirements for poisonous-by-inhalation materials transported by vessel; and eliminate a potentially confusing packing group designation for certain organic peroxides, self-reactive materials, and explosives. These amendments clarify regulatory requirements and, where appropriate, decrease the regulatory burden without compromising the safe transportation of hazardous materials in commerce.

##### B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action within the meaning of Executive Order 12866 (“Regulatory Planning and Review”) and the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

In this final rule, we amend miscellaneous provisions in the HMR for clarification and relaxation of overly burdensome requirements, with the intent of, thereby, increasing voluntary compliance while reducing compliance



costs. As a result, PHMSA anticipates the amendments contained in this rule will have economic benefits to the regulated community. Executive Order 13563 (“Improving Regulation and Regulatory Review”) is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 (“Regulatory Planning and Review”) of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to: (1) Involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) identify and consider regulatory approaches that reduce burden and maintain flexibility; (4) ensure the objectivity of any scientific or technological information used to support regulatory action; and (5) consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome.

In this final rule, PHMSA has involved the public in the regulatory process in a variety of ways: Specifically, PHMSA is addressing issues and errors that were identified for future rulemaking both through letters of interpretation and other correspondence with PHMSA stakeholders who brought editorial errors in the HMR to our attention. In addition, PHMSA has responded to seven petitions for rulemaking and two NTSB Safety Recommendations. PHMSA asked for public comments based on the proposals in this NPRM, and upon receipt of public comment, PHMSA has addressed all substantive comments in this rulemaking action.

The amendments in the final rule promote simplification and harmonization through interagency coordination. In this final rule, PHMSA is revising 49 CFR part 175, in a collaborative effort with the Federal Aviation Administration (FAA), to: clarify the applicability of the HMR to certain aircraft operators, clarify exceptions for passengers and crewmembers, correct inaccurate references to title 14 of the CFR, and make minor editorial corrections applicable to air operations to improve overall clarity. There are minimal additional costs associated with these proposals; however, increased clarity will result in net benefits.

This final rule also promotes harmonization with international standards, such as the IMDG Code, Canada’s TDG requirements, and the ICAO TI. These efforts include:

- Harmonizing hazard communication for poisonous-by-inhalation materials with the IMDG Code and TDG regulations;
- Removing the packing group II designation for certain organic peroxides, self-reactive substances, and explosives to be consistent with the UN Recommendations, IMDG Code, and ICAO TI, thus facilitating international transport;
- Harmonizing entries in the HMT with the above listed international standards;
- Revising the passenger exceptions applicable to small cartridges containing Division 2.2 gas with the ICAO TI;
- Harmonizing the excepted quantities requirements to mirror language employed in the ICAO TI as they apply to articles.

These revisions to the § 172.101 HMT will eliminate errors, reduce ambiguity, harmonize the HMR with international regulations, and improve clarity. Although these revisions are minor, they are expected to produce a safety benefit derived from the increased clarity and accuracy of the text in the § 172.101 HMT.

This final rule permits flexibility in achieving compliance when transporting damaged wet electric storage batteries; extends the requalification interval for certain MC 331 cargo tanks in dedicated propane service from five years to ten years for a pressure test and internal visual inspection, therefore, fostering greater regulatory flexibility without compromising transportation safety; clarifies the regulations to provide flexibility in the ability to use the “NOT-ODORIZED” or “NON-ODORIZED” marking on cargo tanks, cylinders, and portable tanks containing odorized or unodorized LPG. Additionally, by allowing 100 pounds of black or smokeless powder for small arms reclassified as Division 4.1 in each transport vehicle, instead of each motor vehicle, the regulated community can reduce the number of motor vehicles needed to transport these goods.

Where PHMSA identified potential costs to stakeholders, specific comment was requested to clarify such costs. We requested and responded to specific comments on potential cost impacts of the proposals in § 172.604.

A majority of the amendments in this rulemaking are simple clarifications and do not require significant scientific or technological information. However, when necessary in this final rule, PHMSA used scientific or technological information to support its regulatory action. Specifically, such data was considered when structuring

alternatives on how to best deal with issues regarding the testing of pressure relief devices for cargo tank motor vehicles, as well as with issues regarding the extension of the pressure test and internal visual inspection test interval from five to ten years for certain MC 331 cargo tanks in dedicated propane delivery service. This information was used in the evaluation of alternative proposals, and ultimately this information determined how best to promote retrospective analysis to modify and streamline existing requirements that are outmoded, ineffective, insufficient, or excessively burdensome.

### C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This final rule would preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal Hazardous Material Transportation Law, 49 U.S.C. 5125(b)(1), contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are as follows:

- (i) The designation, description, and classification of hazardous materials;
- (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (iii) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, content, and placement of those documents;
- (iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials;
- (v) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container which is represented, marked, certified, or sold as qualified for use in the transport of hazardous materials.

This final rule concerns the classification, packaging, and handling of hazardous materials, among other covered subjects. If adopted, this rule would preempt any State, local, or Indian tribe requirements concerning

these subjects unless the non-Federal requirements are “substantively the same” (See 49 CFR 107.202(d) the Federal requirements.)

The Federal Hazardous Materials Transportation Law provides at 49 U.S.C. 5125(b)(2) that if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption will be 90 days from publication of a final rule on this matter in the **Federal Register**.

#### D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply and a tribal summary impact statement is not required.

#### E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines the rule is not expected to have a significant impact on a substantial number of small entities. In addition, the Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so while still meeting the objectives of applicable regulatory statutes. However, in the case of hazardous materials transportation, it is not possible to establish exceptions or differing standards and still accomplish our safety objectives.

As this final rule would clarify provisions based on PHMSA’s initiatives and correspondence with the regulated community, the impact that it will have on small entities is not expected to be significant. The changes are generally intended to provide relief and, as a result, marginal positive economic benefits to shippers, carriers, and packaging manufacturers and testers, including small entities. These benefits are not at a level that can be considered economically significant. Consequently,

this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s Procedures and Policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

#### F. Paperwork Reduction Act

PHMSA currently has an approved information collection under Office of Management and Budget (OMB) Control Number 2137–0557, entitled “Approvals for Hazardous Materials.” This final rule does not make any changes that would affect the burden for this or any other information collection.

Prior to the publication of a final rule entitled “Hazardous Materials: Revisions to Fireworks Regulation” published in the **Federal Register** on July 6, 2013 [Docket No. PHMSA–2010–0320 (HM–257); 78 FR 42457], the HMR contained a requirement that all certification agencies provide a statement confirming that it would perform its functions independent of the owners and manufacturers of the packagings in its field. The burden for this requirement was accounted for under OMB Control Number 2137–0557. However, the HM–257 final rule inadvertently removed this language from the HMR. Therefore, in this final rule, PHMSA is reinserting the language for certification agencies to confirm that they are independent and not owned by a company in its field. For ease of the reader, this language is to be inserted as follows:

- PHMSA is revising § 107.402(f) to require that a portable tank and MEGC certification agency submit a statement indicating that the agency is independent of and not owned by a portable tank or MEGC manufacturer, owner, or distributor as part of the Portable tank and MEGC Certification Agency application.
- PHMSA is revising § 107.402(e) to require that a lighter certification agency submit a statement that the agency is independent of and not owned by a lighter manufacturer, distributor, import or export company, or proprietorship as part of the Lighter Certification Agency application.
- PHMSA is revising § 107.807 to require that a person who seeks to manufacture DOT specification cylinders and special permit cylinders, or perform chemical analysis and tests of those cylinders outside the United States submits a statement, as part of the

application, indicating that the inspection agency is independent of and not owned by a cylinder manufacturer, owner, or distributor.

#### G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141,300,000 or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and it is the least burdensome alternative that achieves the objective of the rule.

#### I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375, requires that Federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. In accordance with the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), which implement NEPA, an agency may prepare an Environmental Assessment (EA) when it does not anticipate that the final action will have significant environmental effects. They must consider the following: (1) The need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process (40 CFR 1508.9(b)).

##### 1. Purpose and Need

The purpose of this final rule is to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) by making miscellaneous revisions to update and clarify certain regulatory requirements, to respond to seven petitions for rulemaking submitted to PHMSA by various stakeholders, and to address two NTSB recommendations. These amendments, which were identified through an internal review of the HMR as well as in response to communications with various stakeholders, are intended to promote safety, regulatory relief, and clarity. This action is necessary in order to: (1) Fulfill

our statutory directive to promote transportation safety; (2) fulfill our statutory directive under the Administrative Procedure Act (APA) that requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule (5 U.S.C. 553(e)); (3) support governmental efforts to provide regulatory relief to the regulated community; (4) address safety concerns raised by the NTSB and remove regulatory ambiguity identified by the regulated community; and (5) simplify and clarify the regulations in order to promote understanding and compliance.

The intended effect of this action is to enhance the safe transportation of hazardous materials and, in conjunction, clarify, simplify, and relax certain regulatory requirements for carriers, shippers, and other stakeholders. These regulatory revisions will offer more efficient and effective ways of achieving safe and secure transportation of hazardous materials in commerce.

## 2. Alternatives

The alternatives considered in this Environmental Assessment include the following:

### Alternative 1: No Action

Alternative 1 would not result in any rulemakings on this subject, leaving the current regulatory standards to remain in effect. As a result, this option would not address outstanding petitions for rulemaking or NTSB Safety Recommendations. While this alternative would not impose any new costs or change any environmental impacts, neither would it account for the outstanding petitions for rulemaking, NTSB Safety Recommendations, and regulatory concerns reviewed by PHMSA; thus, we have rejected the no action alternative.

### Alternative 2: Go Forward With the Proposed Amendments to the HMR in This NPRM

Alternative 2 revises the HMR as proposed in the NPRM and, accounting for public comment, applies to transportation of hazardous materials by various modes (highway, rail, vessel and aircraft). The amendments encompassed in this alternative are more fully addressed in the preamble and regulatory text sections. However, they generally include the following changes to the HMR, grouped below for ease of discussion:

#### *Incorporation by Reference and Use of International Standards:*

- Remove the entry for CGA Publication C-1.1 in Table 1 to § 171.7

- Incorporate by reference in § 171.7 CGA Publication G-1.6, *Standard for Mobile Acetylene Trailer Systems*, Seventh Edition (responds to petition P-1605 and two NTSB Safety Recommendations, H-09-01 and H-09-02).

- Amend § 171.7(k) to include §§ 179.24 and 180.503.

- Amend the marking requirements for poisonous-by-inhalation shipments transported in accordance with the IMDG Code or TDG Regulations (responds to petition for rulemaking P-1591).

#### *§ 172.101 Hazardous Materials Table and § 172.102 Special Provisions:*

- Remove the Packing Group (PG) II designation for certain organic peroxides, self-reactive substances and explosives (responds to petition for rulemaking P-1590).

- Revise the § 172.101 table to add Special Provision B120 to Column 7 for the entry “Calcium nitrate, UN1454.”
- Revise the entry for “Propellant, solid, UN0501” to remove vessel stowage provision 24E from Column (10B) of the HMT.

- Revise the PG II HMT entry for “Corrosive liquids, flammable, n.o.s., UN2920,” to harmonize the HMR with the UN Model Regulations, IMDG Code, and the ICAO TI by adding a reference to § 173.154 to Column (8A) of the HMT.

- Revise the entry for “Oxidizing solid, corrosive, n.o.s., UN3085, PG II” to harmonize the HMR with the UN Model Regulations, the IMDG Code, and the ICAO TI by adding a reference to § 173.152 to Column (8A) of the HMT.

- Revise the HMT entries for “Trinitrophenol (picric acid), wetted, with not less than 10 percent water by mass, UN3364” and “Trinitrophenol, wetted with not less than 30 percent water, by mass, UN1344” to harmonize the HMR with the UN Model Regulations, IMDG Code, and the ICAO TI to clarify that the 500 gram limit per package does not apply to UN1344 but does apply to UN3364.

- Revise Special Provision 136, for Dangerous goods in machinery or apparatus, in § 172.102 to include reference to Subpart G of Part 173.

- Remove the reference to obsolete Special Provision 18 in the HMT entry “Fire extinguishers, UN1044,” and in § 180.209(j).

#### *Hazard Communication (Marking, Labeling, Placarding, Emergency Response):*

- Correct a reference in § 172.201 to exceptions for the requirement to provide an emergency response telephone number on a shipping paper.

- Revise §§ 172.301(f), 172.326(d), and 172.328(e) to include the clarification that the “NOT-ODORIZED” or “NON-ODORIZED” marking may appear on packagings used for both unodorized and odorized LPG, and remove the effective date of October 1, 2006, if it appears these paragraphs, as the effective date has passed.

- Amend § 172.406(d) by expressly authorizing the use of labels described in subpart E with a dotted or solid line outer border on a surface background of contrasting color.

- Amend the address in § 172.407(d)(4)(ii) to read Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 2nd Floor, East Building, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

- Clarify the marking size requirements for an IBC that is labeled instead of placarded by replacing the bulk package marking reference in § 172.514(c) with the non-bulk marking reference, § 172.301(a)(1).

- Require that emergency response telephone numbers be displayed on shipping papers numerically (responds to petition for rulemaking P-1597).

#### *Shipper Requirements:*

- Revise § 173.4a(a) to clarify that articles (including aerosols) are not eligible for excepted quantity reclassification under § 173.4a, although some are eligible to be shipped as small quantities by highway and rail in § 173.4.

- Clarify that the requirements provided in paragraph § 173.24a(c)(1)(iv) do not apply to limited quantities packaged in accordance with § 173.27(f)(2).

- Clarify the quantity limits for mixed contents packages prepared in accordance with § 173.27(f)(2).

- Clarify the requirements applicable to bulk transportation of combustible liquids by adding § 173.150(f)(3)(xi) stating that the registration requirements in subpart G of part 107 is applicable and revising § 173.150(f)(3)(ix) and (x) for punctuation applicable to a listing of requirements.

- Require that certain shipments of nitric acid utilizing glass inner packagings be contained in intermediate packaging (responds to petition for rulemaking P-1601).

- Add a new paragraph (k) in § 173.159 to address the need for provisions that allow shippers to prepare for transport and offer into transportation damaged wet electric storage batteries.

- Revise § 173.166(e)(6) to add the words “or cargo vessel.”

- Revise §§ 173.170 and 173.171 by changing the term “motor vehicle” to “transport vehicle” to allow for motor vehicles comprised of more than one cargo-carrying body to carry 100 pounds of black or smokeless powder reclassified as Division 4.1 in each cargo-carrying body instead of 100 pounds total in the motor vehicle.

- Revise the provisions in § 173.199(a)(4) by removing the reference to the steel rod impact test in § 178.609(h).

- Amend the bulk packaging section reference in Column (8C) of the HMT from § 173.240 to § 173.216 for the entries NA2212, UN2212, and UN2590. In addition, we are proposing to revise paragraph (c)(1) in § 173.216 by authorizing the use of bulk packages prescribed in § 173.240.

- Amend § 173.306(k) to clarify that aerosols shipped for recycling or disposal by motor vehicle containing a limited quantity are afforded the applicable exceptions provided for ORM-D materials granted under §§ 173.306(i) and 173.156(b).

*Modal Requirements (Air, Vessel, and Highway):*

- Create a new paragraph (d) in § 175.1, stating that this subchapter does not apply to dedicated air ambulance, firefighting, or search and rescue operations.

- Correct § 175.8 by adding the appropriate 14 CFR part 125 citations.

- Clarify exceptions for passengers, crewmembers, and air operators in paragraphs (a)(18), (22), and (24) of § 175.10.

- Clarify § 175.75(e)(2) by replacing the word “located” with “certificated.”

- Clarify § 176.30(a)(4) by replacing the word “packaging” with “package.”

- Clarify that the loading restrictions in § 177.835(c)(1) through (4) area applicable to § 177.848(e).

*Packaging design and requalification:*

- Clarify § 178.337–17(a) to eliminate confusion of the name plate and specification plate requirements.

- Correct an inadvertent editorial error in the formula in § 178.345–3(c)(1).

- Include provisions consistent with the non-bulk packaging and IBC approval provisions for Large Packagings in § 178.955.

- Extend the pressure test and internal visual inspection test interval to ten years for certain MC 331 cargo tanks in dedicated propane delivery service (responds to petition for rulemaking P–1604).

- Clarify the requirements applicable to the testing of pressure relief devices for cargo tank motor vehicles (responds to petition for rulemaking P–1609).

1. Probable Environmental Impacts of the Alternatives

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. Under the HMR, hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause the loss of ecological resources (e.g. wildlife habitats) and the contamination of air, aquatic environments, and soil.

When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates the following: The risk of release of hazmat and resulting environmental impact; the risk to human safety, including any risk to first responders; the longevity of the packaging; and the circumstances in which the regulations would be carried out (i.e., the defined geographic area, the resources, any sensitive areas) and how they could thus be impacted.

PHMSA has determined that most of the regulatory changes proposed in this rulemaking are editorial in nature. As such, these amendments have no impact on the risk of release and resulting environmental impact, human safety, longevity of the packaging, and none of these amendments would be carried out in a defined geographic area. General possible environmental benefits, and detriments, are discussed below.

Alternative 1

The no-action alternative would result in no changes. The current regulations would remain in place, and no new provisions would be added. However, this option would not address outstanding petitions for rulemaking, NTSB Safety Recommendations or consider amendments based on PHMSA’s own initiatives intended to update, clarify, or provide relief from certain existing regulatory requirements. Foregone efficiencies in the Alternative 1 also include freeing up limited resources to concentrate on hazardous materials transportation issues of potentially much greater environmental impact.

Not adopting the proposed environmental and safety requirements

in the final rule under the Alternative 1 would result in a lost opportunity for reducing environmental and safety-related incidents.

In addition, greenhouse gas emissions would remain the same under the Alternative 1.

Alternative 2

If PHMSA selects the provisions as amended in this final rule, we believe that safety and environmental risks would be reduced and that protections to human health and environmental resources would be increased.

Alternative 2 will enhance environmental protection through more targeted and effective training. This set of amendments will eliminate inconsistent hazardous materials regulations, which hamper compliance training efforts. By maintaining consistency between these international regulations and the HMR, shippers and carriers are able to train their hazardous materials employees in a single set of requirements for classification, packaging, hazard communication, handling, and stowage, thereby minimizing the possibility of improperly preparing and transporting a shipment of hazardous materials because of differences between domestic and international regulations.

In addition, Alternative 2 will create more streamlined hazardous regulations, resulting in compliance training efforts which facilitate the regulated community’s ability to comply with the HMR. Potential environmental impacts of each group of amendments in Alternative 2 (selected for this final rule) are discussed individually below:

*Incorporation by Reference and Use of International Standards:*

PHMSA believes that this set of amendments, which will increase standardization and consistency of regulations, will result in greater protection of human health and the environment. Consistency between U.S. and international regulations enhances the safety and environmental protection of international hazardous materials transportation through better understanding of the regulations, an increased level of industry compliance, the smooth flow of hazardous materials from origin to destination, and consistent emergency response in the event of a hazardous materials incident. Incorporation of the *CGA Publication G–1.6, Standard for Mobile Acetylene Trailer Systems*, will mitigate acetylene release and enhance environmental protection during overturn incidents and unloading.

Current greenhouse gas emissions would be unaffected under this proposed set of amendments.

*§ 172.101 Hazardous Materials Table and § 172.102 Special Provisions:*

PHMSA believes that this set of amendments, which will increase standardization and consistency of regulations, will result in greater protection of human health and the environment. As previously stated, consistency between U.S. and international regulations enhances the safety and environmental protection of international hazardous materials transportation through better understanding of the regulations, an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and consistent emergency response in the event of a hazardous materials incident. New and revised entries to the HMT reflect emerging technologies and the need to better describe or differentiate between existing entries. These changes mirror those in the Dangerous Goods list of The 18th Revised Edition of the UN Model Regulations, the 2013–2014 ICAO TI and the 37–14 amendments to the IMDG Code. It is extremely important for the domestic HMR to mirror the UN Model Regulations, the ICAO TI, and the IMDG Code with respect to the entries in the HMT to ensure consistent naming conventions across modes and international borders.

The packing group assignment reflects a degree of danger associated with a particular material and identifies appropriate packaging. However, assignment of a packing group is not appropriate in all cases (e.g. explosives, gases, radioactive material). In such cases the packing group does not indicate a degree of danger, and the packaging requirements for those materials are specified in the appropriate section in part 173. The change to eliminate a packing group designation for materials classified as explosives and organic peroxides specifically listed in the HMT provides a level of consistency, without diminishing environmental protection and safety.

Current greenhouse gas emissions would be unaffected under this set of amendments.

*Hazard Communication (Marking, Labeling, Placarding, Emergency Response):*

PHMSA believes that this set of amendments, which will provide for enhanced hazard communication (hazcom), will result in greater protection of human health and the

environment. The proposed changes communicate the nature of various specialized packaging configurations to package handlers and emergency responders. The amendments would ensure that hazard markings are visible, universally recognizable, and that they contain all information needed by emergency responders, thus resulting in fewer incidents with impacts to the environment and safety.

Similar to the above sets of amendments, PHMSA believes consistency between U.S. and international regulations enhances the safety and environmental protection of international hazardous materials transportation through better understanding of the regulations, an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and consistent emergency response in the event of a hazardous materials incident.

Current greenhouse gas emissions would be unaffected under this proposed set of amendments.

*Shipper Requirements:*

PHMSA believes that this amendment, which will revise, clarify and enhance current regulations, will result in greater protection of human health and the environment. Shippers and transporters of hazardous materials will more easily be able to comply with the HMR through regulations that are easier to understand and more streamlined.

Specific to this set of amendments, improving the packaging requirements applicable to glass packages of nitric acid reduces the occurrences of fires caused by broken inner containers and enhances human health and environmental protection. PHMSA believes that the additional intermediate packaging required by this particular amendment will add another layer of protection in preventing breakage, leakage, and fires. Additionally, this particular amendment creates a more streamlined and efficient HMR through incorporation of a petition for rulemaking (P–1601), which allows both regulators and the regulated community to target limited resources at the most pressing hazmat compliance issues.

Current greenhouse gas emissions would be unaffected under this proposed set of amendments.

*Modal Requirements (Air, Vessel, and Highway):*

PHMSA believes that this amendment, which will revise, clarify, and enhance current regulations, will result in greater protection of human health and the environment. Air, vessel, and highway shippers and transporters

of hazardous materials will more easily be able to comply with the HMR through regulations that are easier to understand and more streamlined. Additionally, the revisions include emphasis being placed in areas requiring more attention.

Current greenhouse gas emissions would be unaffected under this proposed set of amendments.

*Packaging Design and Requalification:*

PHMSA believes that this amendment, which will revise, clarify, and enhance current regulations, will result in greater protection of human health and the environment. Shippers and transporters of hazardous materials will more easily be able to comply with the HMR through regulations which are easier to understand and more streamlined. Additionally, the revisions include emphasis being placed in areas requiring more attention.

Specific to this set of amendments, decreasing the required frequency for pressure testing and visual inspection of certain cargo tanks in dedicated propane service by extending the requalification period from five years to ten years will ease the burden on regulators and the regulated community. This test, which requires significant equipment downtime and man-hours to perform, has been shown to achieve no additional safety or environmental protection when performed at a five-versus-a ten-year interval. In addition, pressure testing requires a significant amount of water usage. Decreasing the testing frequency by half will result in significant volumes of water being conserved. Additionally, this particular amendment creates a more streamlined and efficient HMR through incorporation of a petition for rulemaking (P–1609). A more streamlined and efficient HMR allows both regulators and the regulated community to target limited resources at the most pressing hazmat compliance issues.

Current greenhouse gas emissions would be unaffected under these amendments.

1. Agencies Consulted

This final rule would affect some PHMSA stakeholders, including hazardous materials shippers and carriers by highway, rail, vessel, and aircraft, as well as package manufacturers and testers. PHMSA sought comment on the environmental assessment contained in the NPRM. In addition, PHMSA specifically coordinated with the following Federal agencies and modal partners:

- Department of Justice

- Environmental Protection Agency
- Health and Human Services
- Occupational Safety and Health Administration
- Federal Aviation Administration
- Federal Motor Carrier Safety Administration
- Federal Railroad Administration
- United States Coast Guard

## 2. Conclusion

PHMSA is adopting miscellaneous amendments to the HMR based on comments from the regulated community, NTSB recommendations, and PHMSA's own rulemaking initiatives. The amendments are intended to update, clarify, or provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; facilitate international commerce; and make these requirements easier to understand. These clarifications of regulatory requirements will foster a greater level of compliance with the HMR and, thus, diminish levels of hazardous materials transportation incidents affecting the health and safety of the environment. Therefore, the net environmental impact of this proposal will be positive.

### J. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. The DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov). The electronic form of these written communications and comments can be searched by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). The DOT's complete Privacy Act Statement is available at <http://www.dot.gov/privacy>.

### K. International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, establishing standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as the protection of safety, and do not operate in a manner that excludes imports that meet this objective. This statute also

requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. PHMSA notes the purpose is to ensure the safety of the American public and has assessed the effects of this rule to ensure that it does not exclude imports that meet this objective. As a result, this final rule is not considered as creating an unnecessary obstacle to foreign commerce.

### List of Subjects

#### 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

#### 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

#### 49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

#### 49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

#### 49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

#### 49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

#### 49 CFR Part 177

Hazardous materials transportation, Loading and unloading, Segregation and separation.

#### 49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

#### 49 CFR Part 179

Hazardous materials transportation, Incorporation by reference, Railroad safety, Reporting and recordkeeping requirements.

#### 49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, we amend 49 CFR chapter I as follows:

### PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

- 1. The authority citation for part 107 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; Pub. L. 112–141 section 33006; 49 CFR 1.81 and 1.97.

- 2. In § 107.402, revise paragraphs (d)(1)(i), (e), and (f) to read as follows:

#### § 107.402 Application for designation as a certification agency.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) Be a U.S. resident, or for a non-U.S. resident, have a designated U.S. agent representative as specified in § 105.40 of this subchapter;

\* \* \* \* \*

(e) *Lighter certification agency.* Prior to examining and testing lighters (UN1057) for certification of compliance with the requirements of § 173.308 of this chapter a person must submit an application to, and be approved by, the Associate Administrator to act as a lighter certification agency. In addition to paragraph (b) of this section, the application must include the following information:

(1) The name and address of each facility where lighters are examined and tested;

(2) A detailed description of the applicant's qualifications and ability to, examine and test lighters and certify that the requirements specified by § 173.308 of this chapter have been met; and

(3) A statement that the agency is independent of and not owned by a lighter manufacturer, distributor, import or export company, or proprietorship.

(f) *Portable tank and MEGC certification agencies.* Prior to inspecting portable tanks or multi-element gas containers (MEGCs) for certification of compliance with the requirements of §§ 178.273 and 178.74 of this chapter, respectively, a person must submit an application to, and be approved by, the Associate Administrator to act as a certification agency. In addition to paragraph (b) of

this section, the application must provide the following information:

(1) The name and address of each facility where the portable tank or MEGC, as applicable, is examined and tested;

(2) A detailed description of the applicant's qualifications and ability to examine and test portable tanks or MEGCs, as applicable, and certify that the requirements specified by § 178.273 of this chapter for the approval of UN portable tanks, or § 178.74 of this chapter for the approval of MEGCs have been met; and

(3) A statement indicating that the agency is independent of and not owned by a portable tank or MEGC manufacturer, owner, or distributor.

■ 3. In § 107.807, revise paragraph (b)(3) to read as follows:

**§ 107.807 Approval of non-domestic chemical analyses and tests.**

\* \* \* \* \*

(b) \* \* \*

(3) The name of the independent inspection agency to be used to certify the analyses and tests and a statement from the agency indicating that it is independent of and not owned by a cylinder manufacturer, owner, or distributor; and

\* \* \* \* \*

**PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS**

■ 4. The authority citation for part 171 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410, section 4 (28 U.S.C. 2461 note); Pub. L. 104–121, sections 212–213; Pub. L. 104–134, section 31001; 49 CFR 1.81 and 1.97.

■ 5. In § 171.7:

■ a. Revise paragraph (k)(1);

■ b. Redesignate paragraphs (n)(13) through (21) as paragraphs (n)(14) through (22), respectively, and add new paragraph (n)(13); and

■ c. In Table 1 to 49 CFR 171.7, remove the entry for “Compressed Gas Association, Inc., 4221 Walney Road, 5th Floor, Chantilly, Virginia 20151” and the associated entry for document “CGA C–1.1, Personnel Training and Certification Guidelines for Cylinder Requalification By the Volumetric Expansion Method, 2004, First Edition”.

The revision and addition read as follows:

**§ 171.7 Reference material.**

\* \* \* \* \*

(k) \* \* \*

(1) AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, (AAR Specifications for Tank Cars), December 2000, §§ 173.31; 179.6; 179.7; 179.15; 179.16; 179.20; 179.22; 179.24; 179.100–9; 179.100–10; 179.100–12; 179.100–13; 179.100–14; 179.100–18; 179.101–1; 179.102–1; 179.102–4; 179.102–17; 179.103–5; 179.200–7; 179.200–9; 179.200–10; 179.200–11; 179.200–13; 179.200–17; 179.200–22; 179.201–6; 179.220–6; 179.220–7; 179.220–10; 179.220–11; 179.220–14; 179.220–18; 179.220–26; 179.300–9; 179.300–10; 179.300–15; 179.300–17; 179.400–5; 179.400–6; 179.400–8; 179.400–11; 179.400–12; 179.400–15; 179.400–18; 179.400–20; 179.400–25; 180.503; 180.509; 180.513; 180.515; 180.517.

\* \* \* \* \*

(n) \* \* \*

(13) CGA G–1.6–2011, Standard for Mobile Acetylene Trailer Systems, Seventh Edition, copyright 2011, into § 173.301.

\* \* \* \* \*

■ 6. In § 171.22, revise paragraph (f)(1) to read as follows:

**§ 171.22 Authorization and conditions for the use of international standards and regulations.**

\* \* \* \* \*

(f) *Complete information and certification.* (1) Except for shipments into the United States from Canada conforming to § 171.12, each person importing a hazardous material into the United States must provide the shipper, and the forwarding agent at the place of entry into the United States, timely and complete written information as to the requirements of this subchapter applicable to the particular shipment.

\* \* \* \* \*

■ 7. In § 171.23, paragraphs (b)(10)(iv)(A) and (B) are revised to read as follows:

**§ 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations.**

\* \* \* \* \*

(b) \* \* \*

(10) \* \* \*

(iv) \* \* \*

(A) For a package transported in accordance with the IMDG Code in a

closed transport vehicle or freight container, a label or placard conforming to the IMDG Code specifications for a “Class 2.3” or “Class 6.1” label or placard may be substituted for the POISON GAS or POISON INHALATION HAZARD label or placard, as appropriate. The transport vehicle or freight container must be marked with the identification numbers for the hazardous material in the manner specified in § 172.313(c) of this subchapter and placarded as required by subpart F of part 172 of this subchapter.

(B) For a package transported in accordance with the Transport Canada TDG Regulations in a closed transport vehicle or freight container, a label or placard conforming to the TDG Regulations specifications for a “Class 2.3” or “Class 6.1” label or placard may be substituted for the POISON GAS or POISON INHALATION HAZARD label or placard, as appropriate. The transport vehicle or freight container must be marked with the identification numbers for the hazardous material in the manner specified in § 172.313(c) of this subchapter and placarded as required by subpart F of part 172 of this subchapter. While in transportation in the United States, the transport vehicle or freight container may also be placarded in accordance with the appropriate TDG Regulations in addition to being placarded with the POISON GAS or POISON INHALATION HAZARD placards.

\* \* \* \* \*

**PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS**

■ 8. The authority citation for part 172 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 9. In § 172.101, the Hazardous Materials Table is amended by revising entries under “[REVISE]” in the appropriate alphabetical sequence to read as follows:

**§ 172.101 Purpose and use of hazardous materials table.**

\* \* \* \* \*



## § 172.101 HAZARDOUS MATERIALS TABLE

Sym-bols  (1)	Hazardous materials descriptions and proper shipping names  (2)	Hazard class or division  (3)	Identification Numbers  (4)	PG  (5)	Label Codes  (6)	Special Provisions (§ 172.102)  (7)	(8)			(9)		(10)	
							Packaging (§ 173.***)			Quantity limitations (see §§ 173.27 and 175.75)		Vessel stowage	
							Excep-tions  (8A)	Non-bulk  (8B)	Bulk  (8C)	Passenger aircraft/rail  (9A)	Cargo air-craft only  (9B)	Loca-tion  (10A)	Other  (10B)
	*		*		*		*		*		*		*
	[REVISE]												
	*		*		*		*		*		*		*
D	Ammonium nitrate-fuel oil mixture containing only prilled ammonium nitrate and fuel oil	1.5D	NA0331		1.5D	148	None	62	None	Forbidden	Forbidden	03	25, 19E
	*		*		*		*		*		*		*
	Ammonium nitrate, with more than 0.2 percent combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance	1.1D	UN0222		1.1D	370	None	62	None	Forbidden	Forbidden	04	25, 19E
	*		*		*		*		*		*		*
	Ammonium perchlorate	1.1D	UN0402		1.1D	107	None	62	None	Forbidden	Forbidden	04	25, 19E
	*		*		*		*		*		*		*
	Ammonium picrate, dry or wetted with less than 10 percent water, by mass	1.1D	UN0004		1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E, 19E
	*		*		*		*		*		*		*
	Ammunition, illuminating with or without burster, expelling charge or propelling charge	1.2G	UN0171		1.2G			62	62	Forbidden	Forbidden	03	25
	Ammunition, illuminating with or without burster, expelling charge or propelling charge	1.3G	UN0254		1.3G			62	62	Forbidden	Forbidden	03	25

Ammunition, illuminating <u>with or without burster, expelling charge or propelling charge</u>	1.4G	UN0297		1.4G			62	62	Forbidden	75 kg	02	25
Ammunition, incendiary <u>liquid or gel, with burster, expelling charge or propelling charge</u>	1.3J	UN0247		1.3J			62	None	Forbidden	Forbidden	05	25, 23E
*		*		*		*		*		*		*
Ammunition, incendiary, white phosphorus, <u>with burster, expelling charge or propelling charge</u>	1.2H	UN0243		1.2H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E
Ammunition, incendiary, white phosphorus, <u>with burster, expelling charge or propelling charge</u>	1.3H	UN0244		1.3H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E
Ammunition, incendiary <u>with or without burster, expelling charge, or propelling charge</u>	1.2G	UN0009		1.2G			62	62	Forbidden	Forbidden	03	25
Ammunition, incendiary <u>with or without burster, expelling charge, or propelling charge</u>	1.3G	UN0010		1.3G			62	62	Forbidden	Forbidden	03	25
Ammunition, incendiary <u>with or without burster, expelling charge or propelling charge</u>	1.4G	UN0300		1.4G			62	62	Forbidden	75 kg	02	25
Ammunition, practice	1.4G	UN0362		1.4G			62	62	Forbidden	75 kg	02	25
Ammunition, practice	1.3G	UN0488		1.3G			62	62	Forbidden	Forbidden	03	25
Ammunition, proof	1.4G	UN0363		1.4G			62	62	Forbidden	75 kg	02	25
*		*		*		*		*		*		*
Ammunition smoke, white phosphorus <u>with burster, expelling charge, or propelling charge</u>	1.2H	UN0245		1.2H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E
Ammunition, smoke, white phosphorus <u>with burster, expelling charge, or propelling charge</u>	1.3H	UN0246		1.3H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E
Ammunition, smoke <u>with or without burster, expelling charge or propelling charge</u>	1.2G	UN0015		1.2G			62	62	Forbidden	Forbidden	03	25, 17E
Ammunition, smoke <u>with or without burster, expelling charge or propelling charge</u>	1.3G	UN0016		1.3G			62	62	Forbidden	Forbidden	03	25, 17E
Ammunition, smoke <u>with or without burster, expelling charge or propelling charge</u>	1.4G	UN0303		1.4G			62	62	Forbidden	75 kg	02	25, 14E, 15E, 17E
*		*		*		*		*		*		*

	Ammunition, tear-producing <u>with burster, expelling charge or propelling charge</u>	1.2G	UN0018		1.2G, 8, 6.1			62	62	Forbidden	Forbidden	03	25, 17E
	Ammunition, tear-producing <u>with burster, expelling charge or propelling charge</u>	1.3G	UN0019		1.3G, 8, 6.1			62	62	Forbidden	Forbidden	03	25, 17E
	Ammunition, tear-producing <u>with burster, expelling charge or propelling charge</u>	1.4G	UN0301		1.4G, 8, 6.1			62	62	Forbidden	75 kg	02	25, 14E, 15E, 17E
	*		*		*		*		*		*		*
G	Ammunition, toxic <u>with burster, expelling charge, or propelling charge</u>	1.2K	UN0020		1.2K, 6.1			62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E
G	Ammunition, toxic <u>with burster, expelling charge, or propelling charge</u>	1.3K	UN0021		1.3K, 6.1			62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	*		*		*		*		*		*		*
	Articles, explosive, extremely insensitive <u>or</u> Articles, EEI	1.6N	UN0486		1.6N		None	62	None	Forbidden	Forbidden	03	25
G	Articles, explosive, n.o.s.	1.4S	UN0349		1.4S	101, 148, 382	None	62	None	25 kg	100 kg	01	25
G	Articles, explosive, n.o.s.	1.4B	UN0350		1.4B	101	None	62	None	Forbidden	Forbidden	05	25
G	Articles, explosive, n.o.s.	1.4C	UN0351		1.4C	101	None	62	None	Forbidden	75 kg	02	25
G	Articles, explosive, n.o.s.	1.4D	UN0352		1.4D	101	None	62	None	Forbidden	75 kg	02	25
G	Articles, explosive, n.o.s.	1.4G	UN0353		1.4G	101	None	62	None	Forbidden	75 kg	02	25
G	Articles, explosive, n.o.s.	1.1L	UN0354		1.1L	101	None	62	None	Forbidden	Forbidden	02	25, 14E, 15E
G	Articles, explosive, n.o.s.	1.2L	UN0355		1.2L	101	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
G	Articles, explosive, n.o.s.	1.3L	UN0356		1.3L	101	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
G	Articles, explosive, n.o.s.	1.1C	UN0462		1.1C	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s.	1.1D	UN0463		1.1D	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s.	1.1E	UN0464		1.1E	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s.	1.1F	UN0465		1.1F	101	None	62	None	Forbidden	Forbidden	05	25
G	Articles, explosive, n.o.s.	1.2C	UN0466		1.2C	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s.	1.2D	UN0467		1.2D	101	None	62	None	Forbidden	Forbidden	04	25

G	Articles, explosive, n.o.s.	1.2E	UN0468		1.2E		101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s.	1.2F	UN0469		1.2F		101	None	62	None	Forbidden	Forbidden	05	25
G	Articles, explosive, n.o.s.	1.3C	UN0470		1.3C		101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s.	1.4E	UN0471		1.4E		101	None	62	None	Forbidden	75 kg	03	25
G	Articles, explosive, n.o.s.	1.4F	UN0472		1.4F		101	None	62	None	Forbidden	Forbidden	05	25
	*		*		*			*		*		*		*
	Articles, pyrophoric	1.2L	UN0380		1.2L			None	62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	Articles, pyrotechnic <u>for technical purposes</u>	1.1G	UN0428		1.1G			None	62	None	Forbidden	Forbidden	03	25
	Articles, pyrotechnic <u>for technical purposes</u>	1.2G	UN0429		1.2G			None	62	None	Forbidden	Forbidden	03	25
	Articles, pyrotechnic <u>for technical purposes</u>	1.3G	UN0430		1.3G			None	62	None	Forbidden	Forbidden	03	25
	Articles, pyrotechnic <u>for technical purposes</u>	1.4G	UN0431		1.4G		381	None	62	None	Forbidden	75 kg	02	25
	Articles, pyrotechnic <u>for technical purposes</u>	1.4S	UN0432		1.4S			None	62	None	25 kg	100 kg	01	25
D	Asbestos	9	NA2212	III	9		156, IB8, IP2, IP4	155	216	216, 240	200 kg	200 kg	A	34, 40
G I	Asbestos, amphibole <u>amosite, tremolite, actinolite, anthophyllite, or crocidolite</u>	9	UN2212	II	9		156, IB8, IP2, IP4, T3, TP33	155	216	216, 240	Forbidden	Forbidden	A	34, 40
I	Asbestos, chrysotile	9	UN2590	III	9		156, IB8, IP2, IP3, T1, TP33	155	216	216, 240	200 kg	200 kg	A	34, 40
	*		*		*			*		*		*		*
	Barium azide, <u>dry or wetted with less than 50 percent water, by mass</u>	1.1A	UN0224		1.1A, 6.1		111, 117	None	62	None	Forbidden	Forbidden	05	25
	*		*		*			*		*		*		*
	Black powder, compressed <u>or</u> Gunpowder, compressed <u>or</u> Black powder, in pellets <u>or</u> Gunpowder, in pellets	1.1D	UN0028		1.1D			None	62	None	Forbidden	Forbidden	04	25
	Black powder <u>or</u> Gunpowder, <u>granular or as a meal</u>	1.1D	UN0027		1.1D			None	62	None	Forbidden	Forbidden	04	25
	*		*		*			*		*		*		*
	Bombs, photo-flash	1.1F	UN0037		1.1F				62	None	Forbidden	Forbidden	05	25

	Bombs, photo-flash	1.1D	UN0038		1.1D			62	62	Forbidden	Forbidden	04	25
	Bombs, photo-flash	1.2G	UN0039		1.2G			62	62	Forbidden	Forbidden	03	25
	Bombs, photo-flash	1.3G	UN0299		1.3G			62	62	Forbidden	Forbidden	03	25
	*		*		*		*		*		*		*
	<u>Bombs, with bursting charge</u>	1.1F	UN0033		1.1F			62	None	Forbidden	Forbidden	05	25
	<u>Bombs, with bursting charge</u>	1.1D	UN0034		1.1D			62	62	Forbidden	Forbidden	04	25
	<u>Bombs, with bursting charge</u>	1.2D	UN0035		1.2D			62	62	Forbidden	Forbidden	04	25
	<u>Bombs, with bursting charge</u>	1.2F	UN0291		1.2F			62	None	Forbidden	Forbidden	05	25
	<u>Bombs with flammable liquid, with bursting charge</u>	1.1J	UN0399		1.1J			62	None	Forbidden	Forbidden	05	25, 23E
	<u>Bombs with flammable liquid, with bursting charge</u>	1.2J	UN0400		1.2J			62	None	Forbidden	Forbidden	05	25, 23E
	Boosters with detonator	1.1B	UN0225		1.1B		None	62	None	Forbidden	Forbidden	05	25
	Boosters with detonator	1.2B	UN0268		1.2B		None	62	None	Forbidden	Forbidden	05	25
	Boosters, <u>without detonator</u>	1.1D	UN0042		1.1D	148	None	62	None	Forbidden	Forbidden	04	25
	Boosters, <u>without detonator</u>	1.2D	UN0283		1.2D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	<u>Bursters, explosive</u>	1.1D	UN0043		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Calcium nitrate	5.1	UN1454	III	5.1	34, B120, IB8, IP3, T1, TP33	152	213	240	25 kg	100 kg	A	
	*		*		*		*		*		*		*
	Cartridges, flash	1.1G	UN0049		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Cartridges, flash	1.3G	UN0050		1.3G		None	62	None	Forbidden	75 kg	03	25
	Cartridges for weapons, blank	1.1C	UN0326		1.1C		None	62	None	Forbidden	Forbidden	04	25

	Cartridges for weapons, blank	1.2C	UN0413		1.2C		None	62	None	Forbidden	Forbidden	04	25
	Cartridges for weapons, blank or Cartridges, small arms, blank	1.3C	UN0327		1.3C		None	62	None	Forbidden	Forbidden	04	25
	Cartridges for weapons, blank or Cartridges, small arms, blank	1.4C	UN0338		1.4C		None	62	None	Forbidden	75 kg	02	25
	Cartridges for weapons, blank or Cartridges, small arms, blank or Cartridges for tools, blank	1.4S	UN0014		None		63	62	None	25 kg	100 kg	01	25
	Cartridges for weapons, inert projectile	1.2C	UN0328		1.2C		None	62	62	Forbidden	Forbidden	04	25
	Cartridges for weapons, inert projectile or Cartridges, small arms	1.4S	UN0012		None		63	62	None	25 kg	100 kg	01	25
	Cartridges for weapons, inert projectile or Cartridges, small arms	1.4C	UN0339		1.4C		None	62	None	Forbidden	75 kg	02	25
	Cartridges for weapons, inert projectile or Cartridges, small arms	1.3C	UN0417		1.3C		None	62	None	Forbidden	Forbidden	04	25
	Cartridges for weapons, <u>with bursting charge</u>	1.1F	UN0005		1.1F		None	62	None	Forbidden	Forbidden	05	25
	Cartridges for weapons, <u>with bursting charge</u>	1.1E	UN0006		1.1E		None	62	62	Forbidden	Forbidden	04	25
	Cartridges for weapons, <u>with bursting charge</u>	1.2F	UN0007		1.2F		None	62	None	Forbidden	Forbidden	05	25
	Cartridges for weapons, <u>with bursting charge</u>	1.2E	UN0321		1.2E		None	62	62	Forbidden	Forbidden	04	25
	Cartridges for weapons, <u>with bursting charge</u>	1.4F	UN0348		1.4F		None	62	None	Forbidden	Forbidden	05	25
	Cartridges for weapons, <u>with bursting charge</u>	1.4E	UN0412		1.4E		None	62	62	Forbidden	75 kg	03	25
	Cartridges, oil well	1.3C	UN0277		1.3C		None	62	62	Forbidden	Forbidden	04	25
	Cartridges, oil well	1.4C	UN0278		1.4C		None	62	62	Forbidden	75 kg	02	25
	Cartridges, power device	1.3C	UN0275		1.3C		None	62	62	Forbidden	75 kg	04	25
	Cartridges, power device	1.4C	UN0276		1.4C	110	None	62	62	Forbidden	75 kg	02	25
	Cartridges, power device	1.4S	UN0323		1.4S	110, 347	63	62	62	25 kg	100 kg	01	25
	Cartridges, power device	1.2C	UN0381		1.2C		None	62	62	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Cartridges, signal	1.3G	UN0054		1.3G		None	62	None	Forbidden	75 kg	03	25

	Cartridges, signal	1.4G	UN0312		1.4G		None	62	None	Forbidden	75 kg	02	25
	Cartridges, signal	1.4S	UN0405		1.4S		None	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Cases, cartridge, empty with primer	1.4S	UN0055		1.4S	50	63	62	None	25 kg	100 kg	01	25
	Cases, cartridges, empty with primer	1.4C	UN0379		1.4C	50	None	62	None	Forbidden	75 kg	02	25
	Cases, combustible, empty, without primer	1.4C	UN0446		1.4C		None	62	None	Forbidden	75 kg	02	25
	Cases, combustible, empty, without primer	1.3C	UN0447		1.3C		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Charges, bursting, plastics bonded	1.1D	UN0457		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Charges, bursting, plastics bonded	1.2D	UN0458		1.2D		None	62	None	Forbidden	Forbidden	04	25
	Charges, bursting, plastics bonded	1.4D	UN0459		1.4D		None	62	None	Forbidden	75 kg	02	25
	Charges, bursting, plastics bonded	1.4S	UN0460		1.4S	347	None	62	None	25 kg	100 kg	01	25
	Charges, demolition	1.1D	UN0048		1.1D		None	62	62	Forbidden	Forbidden	04	25
	Charges, depth	1.1D	UN0056		1.1D		None	62	62	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Charges, explosive, commercial <u>without</u> detonator	1.1D	UN0442		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Charges, explosive, commercial <u>without</u> detonator	1.2D	UN0443		1.2D		None	62	None	Forbidden	Forbidden	04	25
	Charges, explosive, commercial <u>without</u> detonator	1.4D	UN0444		1.4D		None	62	None	Forbidden	75 kg	02	25
	Charges, explosive, commercial <u>without</u> detonator	1.4S	UN0445		1.4S	347	None	62	None	25 kg	100 kg	01	25
	Charges, propelling	1.1C	UN0271		1.1C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling	1.3C	UN0272		1.3C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling	1.2C	UN0415		1.2C		None	62	None	Forbidden	Forbidden	04	25



	Charges, propelling	1.4C	UN0491		1.4C		None	62	None	Forbidden	75 kg	02	25
	Charges, propelling, for cannon	1.3C	UN0242		1.3C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling, for cannon	1.1C	UN0279		1.1C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling, for cannon	1.2C	UN0414		1.2C		None	62	None	Forbidden	Forbidden	04	25
	Charges, shaped, flexible, linear	1.4D	UN0237		1.4D		None	62	None	Forbidden	75 kg	02	25
	Charges, shaped, flexible, linear	1.1D	UN0288		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Charges, shaped, <u>without detonator</u>	1.1D	UN0059		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Charges, shaped, <u>without detonator</u>	1.2D	UN0439		1.2D		None	62	None	Forbidden	Forbidden	04	25
	Charges, shaped, <u>without detonator</u>	1.4D	UN0440		1.4D		None	62	None	Forbidden	75 kg	02	25
	Charges, shaped, <u>without detonator</u>	1.4S	UN0441		1.4S	347	None	62	None	25 kg	100 kg	01	25
	Charges, supplementary explosive	1.1D	UN0060		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Coating solution (includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining)	3	UN1139	I	3	T11, TP1, TP8, TP27	150	201	243	1 L	30 L	E	
				II	3	149, IB2, T4, TP1, TP8	150	202	242	5 L	60 L	B	
				III	3	B1, IB3, T2, TP1	150	203	242	60 L	220 L	A	
	*		*		*		*		*		*		*
DG	Combustible liquid, n.o.s.	Comb liq	NA1993	III	None	148, IB3, T1, TP1	150	203	241	60 L	220 L	A	
G	Components, explosive train, n.o.s.	1.2B	UN0382		1.2B	101	None	62	None	Forbidden	Forbidden	05	25
G	Components, explosive train, n.o.s.	1.4B	UN0383		1.4B	101	None	62	None	Forbidden	75 kg	05	25
G	Components, explosive train, n.o.s.	1.4S	UN0384		1.4S	101	None	62	None	25 kg	100 kg	01	25
G	Components, explosive train, n.o.s.	1.1B	UN0461		1.1B	101	None	62	None	Forbidden	Forbidden	05	25



	Cutters, cable, explosive	1.4S	UN0070		1.4S		None	62	62	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Cyclotetramethylenetetranitramine, desensitized <u>or</u> Octogen, desensitized <u>or</u> HMX, desensitized	1.1D	UN0484		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Cyclotetramethylenetetranitramine, wetted <u>or</u> HMX, wetted <u>or</u> Octogen, wetted <u>with not less than 15 percent water, by mass</u>	1.1D	UN0226		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Cyclotrimethylenetrinitramine, desensitized <u>or</u> Cyclonite, desensitized <u>or</u> Hexogen, desensitized <u>or</u> RDX, desensitized	1.1D	UN0483		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Cyclotrimethylenetrinitramine, wetted <u>or</u> Cyclonite, wetted <u>or</u> Hexogen, wetted <u>or</u> RDX, wetted with not less than 15 percent water by mass	1.1D	UN0072		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Deflagrating metal salts of aromatic nitroderivatives, n.o.s.	1.3C	UN0132		1.3C		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*		*		*		*		*
	Detonator assemblies, non-electric <u>for blasting</u>	1.1B	UN0360		1.1B		None	62	None	Forbidden	Forbidden	05	25
	Detonator assemblies, non-electric, <u>for blasting</u>	1.4B	UN0361		1.4B	103, 148	63(f), 63(g)	62	None	Forbidden	75 kg	05	25
	Detonator assemblies, non-electric, <u>for blasting</u>	1.4S	UN0500		1.4S	148, 347	63(f), 63(g)	62	None	25 kg	100 kg	01	25
	Detonators, electric, <u>for blasting</u>	1.1B	UN0030		1.1B	148	63(f), 63(g)	62	None	Forbidden	Forbidden	05	25
	Detonators, electric, <u>for blasting</u>	1.4B	UN0255		1.4B	103, 148	63(f), 63(g)	62	None	Forbidden	75 kg	05	25
	Detonators, electric <u>for blasting</u>	1.4S	UN0456		1.4S	148, 347	63(f), 63(g)	62	None	25 kg	100 kg	01	25
	Detonators for ammunition	1.1B	UN0073		1.1B		None	62	None	Forbidden	Forbidden	05	25
	Detonators for ammunition	1.2B	UN0364		1.2B		None	62	None	Forbidden	Forbidden	05	25
	Detonators for ammunition	1.4B	UN0365		1.4B	103	None	62	None	Forbidden	75 kg	05	25
	Detonators for ammunition	1.4S	UN0366		1.4S	347	None	62	None	25 kg	100 kg	01	25

	Detonators, non-electric, <u>for blasting</u>	1.1B	UN0029		1.1B		None	62	None	Forbidden	Forbidden	05	25
	Detonators, non-electric, <u>for blasting</u>	1.4B	UN0267		1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	05	25
	Detonators, non-electric, <u>for blasting</u>	1.4S	UN0455		1.4S	148, 347	63(f), 63(g)	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Diazodinitrophenol, wetted <u>with not less than 40 percent water or mixture of alcohol and water, by mass</u>	1.1A	UN0074		1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25
	*		*		*		*		*		*		*
	Diethyleneglycol dinitrate, desensitized <u>with not less than 25 percent non-volatile water-insoluble phlegmatizer, by mass</u>	1.1D	UN0075		1.1D		None	62	None	Forbidden	Forbidden	04	25, 21E
	*		*		*		*		*		*		*
	Dinitroglycoluril or Dingu	1.1D	UN0489		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Dinitrophenol, <u>dry or wetted with less than 15 percent water, by mass</u>	1.1D	UN0076		1.1D, 6.1		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*		*		*		*		*
	Dinitrophenolates alkali metals, <u>dry or wetted with less than 15 percent water, by mass</u>	1.3C	UN0077		1.3C, 6.1		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*		*		*		*		*
	Dinitrosorcinol, <u>dry or wetted with less than 15 percent water, by mass</u>	1.1D	UN0078		1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*		*		*		*		*
	Dinitrosobenzene	1.3C	UN0406		1.3C		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Dipicryl sulfide, <u>dry or wetted with less than 10 percent water, by mass</u>	1.1D	UN0401		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Explosive, blasting, type A	1.1D	UN0081		1.1D	148	None	62	None	Forbidden	Forbidden	04	25, 19E, 21E

	Explosive, blasting, type B	1.1D	UN0082		1.1D		None	62	None	Forbidden	Forbidden	04	25, 19E
	Explosive, blasting, type B or Agent blasting, Type B	1.5D	UN0331		1.5D	105, 106, 148	None	62	None	Forbidden	Forbidden	03	25, 19E
	Explosive, blasting, type C	1.1D	UN0083		1.1D	123	None	62	None	Forbidden	Forbidden	04	25, 22E
	Explosive, blasting, type D	1.1D	UN0084		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Explosive, blasting, type E	1.1D	UN0241		1.1D	148	None	62	None	Forbidden	Forbidden	04	25, 19E
	Explosive, blasting, type E or Agent blasting, Type E	1.5D	UN0332		1.5D	105, 106, 148	None	62	None	Forbidden	Forbidden	03	25, 19E
	*		*		*		*		*		*		*
	Fire extinguishers <i>containing compressed or liquefied gas</i>	2.2	UN1044		2.2	110	309	309	None	75 kg	150 kg	A	
	*		*		*		*		*		*		*
	Fireworks	1.1G	UN0333		1.1G	108	None	62	None	Forbidden	Forbidden	03	25
	Fireworks	1.2G	UN0334		1.2G	108	None	62	None	Forbidden	Forbidden	03	25
	Fireworks	1.3G	UN0335		1.3G	108	None	62	None	Forbidden	Forbidden	03	25
	Fireworks	1.4G	UN0336		1.4G	108, 200	None	62	None	Forbidden	75 kg	02	25
	Fireworks	1.4S	UN0337		1.4S	108	None	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Flares, aerial	1.3G	UN0093		1.3G		None	62	None	Forbidden	75 kg	03	25
	Flares, aerial	1.4G	UN0403		1.4G		None	62	None	Forbidden	75 kg	02	25
	Flares, aerial	1.4S	UN0404		1.4S		None	62	None	25 kg	100 kg	01	25
	Flares, aerial	1.1G	UN0420		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Flares, aerial	1.2G	UN0421		1.2G		None	62	None	Forbidden	Forbidden	03	25
	*		*		*		*		*		*		*
	Flares, surface	1.3G	UN0092		1.3G		None	62	None	Forbidden	75 kg	03	25

	Flares, surface	1.1G	UN0418		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Flares, surface	1.2G	UN0419		1.2G		None	62	None	Forbidden	Forbidden	03	25
	*		*		*		*		*		*		*
	Flash powder	1.1G	UN0094		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Flash powder	1.3G	UN0305		1.3G		None	62	None	Forbidden	Forbidden	03	25
	*		*		*		*		*		*		*
	Fracturing devices, explosive, <u>without detonators for oil wells</u>	1.1D	UN0099		1.1D		None	62	62	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Fuse, igniter <u>tubular metal clad</u>	1.4G	UN0103		1.4G		None	62	None	Forbidden	75 kg	02	25
	Fuse, non-detonating <u>instantaneous or quickmatch</u>	1.3G	UN0101		1.3G		None	62	None	Forbidden	Forbidden	03	25
	Fuse, safety	1.4S	UN0105		1.4S		None	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Fuzes, detonating	1.1B	UN0106		1.1B		None	62	None	Forbidden	Forbidden	05	25
	Fuzes, detonating	1.2B	UN0107		1.2B		None	62	None	Forbidden	Forbidden	05	25
	Fuzes, detonating	1.4B	UN0257		1.4B	116	None	62	None	Forbidden	75 kg	05	25
	Fuzes, detonating	1.4S	UN0367		1.4S	116	None	62	None	25 kg	100 kg	01	25
	Fuzes, detonating, <u>with protective features</u>	1.1D	UN0408		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Fuzes, detonating, <u>with protective features</u>	1.2D	UN0409		1.2D		None	62	None	Forbidden	Forbidden	04	25
	Fuzes, detonating, <u>with protective features</u>	1.4D	UN0410		1.4D	116	None	62	None	Forbidden	75 kg	02	25
	Fuzes, igniting	1.3G	UN0316		1.3G		None	62	None	Forbidden	Forbidden	03	25
	Fuzes, igniting	1.4G	UN0317		1.4G		None	62	None	Forbidden	75 kg	02	25
	Fuzes, igniting	1.4S	UN0368		1.4S		None	62	None	25 kg	100 kg	01	25

	*		*		*		*		*		*		*
Grenades, <u>hand or rifle, with bursting charge</u>	1.1D	UN0284		1.1D			62	None	Forbidden	Forbidden	04		25
Grenades, <u>hand or rifle, with bursting charge</u>	1.2D	UN0285		1.2D			62	None	Forbidden	Forbidden	04		25
Grenades, <u>hand or rifle, with bursting charge</u>	1.1F	UN0292		1.1F			62	None	Forbidden	Forbidden	05		25
Grenades, <u>hand or rifle, with bursting charge</u>	1.2F	UN0293		1.2F			62	None	Forbidden	Forbidden	05		25
	*		*	*		*		*		*			*
Grenades, practice, <u>hand or rifle</u>	1.4S	UN0110		1.4S			62	None	25 kg	100 kg	01		25
Grenades, practice, <u>hand or rifle</u>	1.3G	UN0318		1.3G			62	None	Forbidden	Forbidden	03		25
Grenades, practice, <u>hand or rifle</u>	1.2G	UN0372		1.2G			62	None	Forbidden	Forbidden	03		25
Grenades practice, <u>hand or rifle</u>	1.4G	UN0452		1.4G			62	None	Forbidden	75 kg	02		25
	*		*	*		*		*		*			*
Guanyl nitrosaminoguanylidene hydrazine, <u>wetted with not less than 30 percent water, by mass</u>	1.1A	UN0113		1.1A	111, 117	None	62	None	Forbidden	Forbidden	05		25
	*		*	*		*		*		*			*
Guanyl nitrosaminoguanyltetrazene, <u>wetted or Tetrazene, wetted with not less than 30 percent water or mixture of alcohol and water, by mass</u>	1.1A	UN0114		1.1A	111, 117	None	62	None	Forbidden	Forbidden	05		25
	*		*	*		*		*		*			*
Hexanitrodiphenylamine <u>or</u> Dipicrylamine <u>or</u> Hexyl	1.1D	UN0079		1.1D		None	62	None	Forbidden	Forbidden	04		25
	*		*	*		*		*		*			*
Hexanitrostilbene	1.1D	UN0392		1.1D		None	62	None	Forbidden	Forbidden	04		25
	*		*	*		*		*		*			*
Hexolite, <u>or</u> Hexotol <u>dry or wetted with less than 15 percent water, by mass</u>	1.1D	UN0118		1.1D		None	62	None	Forbidden	Forbidden	04		25
Hexotonal	1.1D	UN0393		1.1D		None	62	None	Forbidden	Forbidden	04		25





	5-Mercaptotetrazol-1-acetic acid	1.4C	UN0448		1.4C		None	62	None	Forbidden	75 kg	02	25
	*		*		*		*		*		*		*
	Mercury fulminate, wetted <u>with not less than 20 percent water, or mixture of alcohol and water, by mass</u>	1.1A	UN0135		1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25
	*		*		*		*		*		*		*
	Mines <u>with bursting charge</u>	1.1F	UN0136		1.1F			62	None	Forbidden	Forbidden	05	25
	Mines <u>with bursting charge</u>	1.1D	UN0137		1.1D			62	62	Forbidden	Forbidden	04	25
	Mines <u>with bursting charge</u>	1.2D	UN0138		1.2D			62	62	Forbidden	Forbidden	04	25
	Mines <u>with bursting charge</u>	1.2F	UN0294		1.2F			62	None	Forbidden	Forbidden	05	25
	*		*		*		*		*		*		*
D	Model rocket motor	1.4C	NA0276		1.4C	51	None	62	None	Forbidden	75 kg	02	25
D	Model rocket motor	1.4S	NA0323		1.4S	51	None	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Nitro urea	1.1D	UN0147		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	5-Nitrobenzotriazol	1.1D	UN0385		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Nitrocellulose, <u>dry or wetted with less than 25 percent water (or alcohol), by mass</u>	1.1D	UN0340		1.1D		None	62	None	Forbidden	Forbidden	04	25, 27E
	*		*		*		*		*		*		*
	Nitrocellulose, <u>plasticized with not less than 18 percent plasticizing substance, by mass</u>	1.3C	UN0343		1.3C		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Nitrocellulose, <u>unmodified or plasticized with less than 18 percent plasticizing substance, by mass</u>	1.1D	UN0341		1.1D		None	62	None	Forbidden	Forbidden	04	25, 27E

	Nitrocellulose, wetted <u>with not less than 25 percent alcohol, by mass</u>	1.3C	UN0342		1.3C		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Nitroglycerin, desensitized <u>with not less than 40 percent non-volatile water insoluble phlegmatizer, by mass</u>	1.1D	UN0143		1.1D, 6.1	125	None	62	None	Forbidden	Forbidden	04	25, 21E
	*		*		*		*		*		*		*
	Nitroglycerin, solution in alcohol, <u>with more than 1 percent but not more than 10 percent nitroglycerin</u>	1.1D	UN0144		1.1D		None	62	None	Forbidden	Forbidden	04	25, 21E
	*		*		*		*		*		*		*
	Nitroguanidine or Picrite, <u>dry or wetted with less than 20 percent water, by mass</u>	1.1D	UN0282		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Nitrostarch, <u>dry or wetted with less than 20 percent water, by mass</u>	1.1D	UN0146		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Nitrotriazolone or NTO	1.1D	UN0490		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Octolite or Octol, <u>dry or wetted with less than 15 percent water, by mass</u>	1.1D	UN0266		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
G	Organic peroxide type B, liquid	5.2	UN3101		5.2, 1	53	152	225	None	Forbidden	Forbidden	D	12, 25, 52, 53
G	Organic peroxide type B, liquid, temperature controlled	5.2	UN3111		5.2, 1	53	None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type B, solid	5.2	UN3102		5.2, 1	53	152	225	None	Forbidden	Forbidden	D	12, 25, 52, 53
G	Organic peroxide type B, solid, temperature controlled	5.2	UN3112		5.2, 1	53	None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type C, liquid	5.2	UN3103		5.2		152	225	None	5 L	10 L	D	12, 25, 52, 53
G	Organic peroxide type C, liquid, temperature controlled	5.2	UN3113		5.2		None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type C, solid	5.2	UN3104		5.2		152	225	None	5 kg	10 kg	D	12, 25, 52, 53

G	Organic peroxide type C, solid, temperature controlled	5.2	UN3114		5.2		None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type D, liquid	5.2	UN3105		5.2		152	225	None	5 L	10 L	D	12, 25, 52, 53
G	Organic peroxide type D, liquid, temperature controlled	5.2	UN3115		5.2		None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type D, solid	5.2	UN3106		5.2		152	225	None	5 kg	10 kg	D	12, 25, 52, 53
G	Organic peroxide type D, solid, temperature controlled	5.2	UN3116		5.2		None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type E, liquid	5.2	UN3107		5.2	A61	152	225	None	10 L	25 L	D	12, 25, 52, 53
G	Organic peroxide type E, liquid, temperature controlled	5.2	UN3117		5.2		None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type E, solid	5.2	UN3108		5.2		152	225	None	10 kg	25 kg	D	12, 25, 52, 53
G	Organic peroxide type E, solid, temperature controlled	5.2	UN3118		5.2		None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type F, liquid	5.2	UN3109		5.2	A61, IP5	152	225	225	10 L	25 L	D	12, 25, 52, 53
G	Organic peroxide type F, liquid, temperature controlled	5.2	UN3119		5.2	IP5	None	225	225	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type F, solid	5.2	UN3110		5.2	TP33	152	225	225	10 kg	25 kg	D	12, 25, 52, 53
G	Organic peroxide type F, solid, temperature controlled	5.2	UN3120		5.2	TP33	None	225	225	Forbidden	Forbidden	D	2, 25, 52, 53
	*		*		*		*		*		*		*
	Pentaerythrite tetranitrate <u>or</u> Pentaerythritol tetranitrate <u>or</u> PETN, <u>with not less than 7 percent wax by mass</u>	1.1D	UN0411		1.1D	120	None	62	None	Forbidden	Forbidden	04	25
	Pentaerythrite tetranitrate, wetted <u>or</u> Pentaerythritol tetranitrate, wetted, <u>or</u> PETN, wetted <u>with not less than 25 percent water, by mass, or</u> Pentaerythrite tetranitrate, <u>or</u> Pentaerythritol tetranitrate <u>or</u> PETN, desensitized <u>with not less than 15 percent phlegmatizer by mass</u>	1.1D	UN0150		1.1D	121	None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Pentolite, <u>dry or wetted with less than 15 percent water, by mass</u>	1.1D	UN0151		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Potassium	4.3	UN2257	1	4.3	A7, A19, A20, B27, IB4, IP1,	151	211	244	Forbidden	15 kg	D	13, 52, 148

						N6, N34, T9, TP7, TP33							
	*		*		*		*		*		*		*
	Powder cake, wetted or Powder paste, wetted with not less than 17 percent alcohol by mass	1.1C	UN0433		1.1C		None	62	None	Forbidden	Forbidden	04	25
	Powder cake, wetted or Powder paste, wetted with not less than 25 percent water, by mass	1.3C	UN0159		1.3C		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Powder, smokeless	1.1C	UN0160		1.1C		None	62	None	Forbidden	Forbidden	04	25, 26E
	Powder, smokeless	1.3C	UN0161		1.3C		None	62	None	Forbidden	Forbidden	04	25, 26E
	Powder, smokeless	1.4C	UN0509		1.4C	16	171	62	None	Forbidden	75 kg	02	25
	*		*		*		*		*		*		*
	Primers, cap type	1.4S	UN0044		None		None	62	None	25 kg	100 kg	01	25
	Primers, cap type	1.1B	UN0377		1.1B		None	62	None	Forbidden	Forbidden	05	25
	Primers, cap type	1.4B	UN0378		1.4B		None	62	None	Forbidden	75 kg	05	25
	*		*		*		*		*		*		*
	Primers, tubular	1.3G	UN0319		1.3G		None	62	None	Forbidden	Forbidden	03	25
	Primers, tubular	1.4G	UN0320		1.4G		None	62	None	Forbidden	75 kg	02	25
	Primers, tubular	1.4S	UN0376		None		None	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Printing ink, flammable or Printing ink related material (including printing ink thinning or reducing compound), flammable	3	UN1210	I	3	367, T11, TP1, TP8	150	173	243	1 L	30 L	E	
				II	3	149, 367, 383, IB2, T4, TP1, TP8	150	173	242	5 L	60 L	B	
				III	3	367, B1, IB3, T2, TP1	150	173	242	60 L	220 L	A	
	*		*		*		*		*		*		*
	Projectiles, inert with tracer	1.4S	UN0345		1.4S			62	62	25 kg	100 kg	01	25
	Projectiles, inert, with tracer	1.3G	UN0424		1.3G			62	62	Forbidden	Forbidden	03	25
	Projectiles, inert, with tracer	1.4G	UN0425		1.4G			62	62	Forbidden	75 kg	02	25
	Projectiles, with burster or expelling charge	1.2D	UN0346		1.2D			62	62	Forbidden	Forbidden	04	25

Projectiles, <u>with burster or expelling charge</u>	1.4D	UN0347		1.4D			62	62	Forbidden	75 kg	02	25
Projectiles, <u>with burster or expelling charge</u>	1.2F	UN0426		1.2F			62	None	Forbidden	Forbidden	05	25
Projectiles, <u>with burster or expelling charge</u>	1.4F	UN0427		1.4F			62	None	Forbidden	Forbidden	05	25
Projectiles, <u>with burster or expelling charge</u>	1.2G	UN0434		1.2G			62	62	Forbidden	Forbidden	03	25
Projectiles, <u>with burster or expelling charge</u>	1.4G	UN0435		1.4G			62	62	Forbidden	75 kg	02	25
Projectiles, <u>with bursting charge</u>	1.1F	UN0167		1.1F			62	None	Forbidden	Forbidden	05	25
Projectiles, <u>with bursting charge</u>	1.1D	UN0168		1.1D			62	62	Forbidden	Forbidden	04	25
Projectiles, <u>with bursting charge</u>	1.2D	UN0169		1.2D			62	62	Forbidden	Forbidden	04	25
Projectiles, <u>with bursting charge</u>	1.2F	UN0324		1.2F			62	None	Forbidden	Forbidden	05	25
Projectiles, <u>with bursting charge</u>	1.4D	UN0344		1.4D			62	62	Forbidden	75 kg	02	25
*		*		*		*		*		*		*
Propellant, liquid	1.3C	UN0495		1.3C	37	None	62	None	Forbidden	Forbidden	04	25
Propellant, liquid	1.1C	UN0497		1.1C	37	None	62	None	Forbidden	Forbidden	04	25
Propellant, solid	1.1C	UN0498		1.1C		None	62	None	Forbidden	Forbidden	04	25, 26E
Propellant, solid	1.3C	UN0499		1.3C		None	62	None	Forbidden	Forbidden	04	25, 26E
Propellant, solid	1.4C	UN0501		1.4C		None	62	None	Forbidden	Forbidden	02	25
*		*		*		*		*		*		*
RDX and HMX mixtures, wetted <u>with not less than 15 percent water by mass</u> or RDX and HMX mixtures, desensitized <u>with not less than 10 percent phlegmatizer by mass</u>	1.1D	UN0391		1.1D		None	62	None	Forbidden	Forbidden	04	25
*		*		*		*		*		*		*
Release devices, explosive	1.4S	UN0173		1.4S		None	62	62	25 kg	100 kg	01	25
*		*		*		*		*		*		*
Rivets, explosive	1.4S	UN0174		1.4S		None	62	62	25 kg	100 kg	01	25
*		*		*		*		*		*		*
Rocket motors	1.3C	UN0186		1.3C	109	None	62	62	Forbidden	220 kg	04	25
Rocket motors	1.1C	UN0280		1.1C	109	None	62	62	Forbidden	Forbidden	04	25
Rocket motors	1.2C	UN0281		1.2C	109	None	62	62	Forbidden	Forbidden	04	25

	Rocket motors, liquid fueled	1.2J	UN0395		1.2J		109	None	62	None	Forbidden	Forbidden	05	25, 23E
	Rocket motors, liquid fueled	1.3J	UN0396		1.3J		109	None	62	None	Forbidden	Forbidden	05	25, 23E
	Rocket motors with hypergolic liquids with or without an expelling charge	1.3L	UN0250		1.3L		109	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
	Rocket motors with hypergolic liquids with or without an expelling charge	1.2L	UN0322		1.2L		109	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
	Rockets, line-throwing	1.2G	UN0238		1.2G			None	62	None	Forbidden	Forbidden	03	25
	Rockets, line-throwing	1.3G	UN0240		1.3G			None	62	None	Forbidden	75 kg	03	25
	Rockets, line-throwing	1.4G	UN0453		1.4G			None	62	None	Forbidden	75 kg	02	25
	Rockets, liquid fueled with bursting charge	1.1J	UN0397		1.1J			None	62	None	Forbidden	Forbidden	05	25, 23E
	Rockets, liquid fueled with bursting charge	1.2J	UN0398		1.2J			None	62	None	Forbidden	Forbidden	05	25, 23E
	Rockets, with bursting charge	1.1F	UN0180		1.1F			None	62	None	Forbidden	Forbidden	05	25
	Rockets, with bursting charge	1.1E	UN0181		1.1E			None	62	62	Forbidden	Forbidden	04	25
	Rockets, with bursting charge	1.2E	UN0182		1.2E			None	62	62	Forbidden	Forbidden	04	25
	Rockets, with bursting charge	1.2F	UN0295		1.2F			None	62	None	Forbidden	Forbidden	05	25
	Rockets, with expelling charge	1.2C	UN0436		1.2C			None	62	62	Forbidden	Forbidden	04	25
	Rockets, with expelling charge	1.3C	UN0437		1.3C			None	62	62	Forbidden	Forbidden	04	25
	Rockets, with expelling charge	1.4C	UN0438		1.4C			None	62	62	Forbidden	75 kg	02	25
	Rockets, with inert head	1.3C	UN0183		1.3C			None	62	62	Forbidden	Forbidden	04	25
	*		*		*			*		*		*		*
G	Self-heating solid, organic, n.o.s.	4.2	UN3088	II	4.2	IB6, IP2, T3, TP33		None	212	241	15 kg	50 kg	C	
				III	4.2	B116, B130, IB8, IP3, T1, TP33		None	213	241	25 kg	100 kg	C	
	*		*		*			*		*		*		
G	Self-reactive liquid type B	4.1	UN3221		4.1		53	151	224	None	Forbidden	Forbidden	D	25, 52, 53, 127
G	Self-reactive liquid type B, temperature controlled	4.1	UN3231		4.1		53	None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive liquid type C	4.1	UN3223		4.1			151	224	None	5 L	10 L	D	25, 52, 53
G	Self-reactive liquid type C, temperature controlled	4.1	UN3233		4.1			None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive liquid type D	4.1	UN3225		4.1			151	224	None	5 L	10 L	D	25, 52, 53
G	Self-reactive liquid type D, temperature controlled	4.1	UN3235		4.1			None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53

G	Self-reactive liquid type E	4.1	UN3227		4.1		151	224	None	10 L	25 L	D	25, 52, 53
G	Self-reactive liquid type E, temperature controlled	4.1	UN3237		4.1		None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive liquid type F	4.1	UN3229		4.1		151	224	None	10 L	25 L	D	25, 52, 53
G	Self-reactive liquid type F, temperature controlled	4.1	UN3239		4.1		None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive solid type B	4.1	UN3222		4.1	53	151	224	None	Forbidden	Forbidden	D	25, 52, 53, 127
G	Self-reactive solid type B, temperature controlled	4.1	UN3232		4.1	53	None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive solid type C	4.1	UN3224		4.1		151	224	None	5 kg	10 kg	D	25, 52, 53
G	Self-reactive solid type C, temperature controlled	4.1	UN3234		4.1		None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive solid type D	4.1	UN3226		4.1		151	224	None	5 kg	10 kg	D	25, 52, 53
G	Self-reactive solid type D, temperature controlled	4.1	UN3236		4.1		None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive solid type E	4.1	UN3228		4.1		151	224	None	10 kg	25 kg	D	25, 52, 53
G	Self-reactive solid type E, temperature controlled	4.1	UN3238		4.1		None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive solid type F	4.1	UN3230		4.1		151	224	None	10 kg	25 kg	D	25, 52, 53
G	Self-reactive solid type F, temperature controlled	4.1	UN3240		4.1		None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
	*		*		*		*		*		*		*
	Signal devices, hand	1.4G	UN0191		1.4G	381	None	62	None	Forbidden	75 kg	02	25
	Signal devices, hand	1.4S	UN0373		1.4S	381	None	62	None	25 kg	100 kg	01	25
	Signals, distress, <u>ship</u>	1.1G	UN0194		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Signals, distress, <u>ship</u>	1.3G	UN0195		1.3G		None	62	None	Forbidden	75 kg	03	25
	*		*		*		*		*		*		*
	Signals, railway track, explosive	1.1G	UN0192		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Signals, railway track, explosive	1.4S	UN0193		1.4S	381	None	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Signals, smoke	1.1G	UN0196		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Signals, smoke	1.4G	UN0197		1.4G		None	62	None	Forbidden	75 kg	02	25
	Signals, smoke	1.2G	UN0313		1.2G		None	62	None	Forbidden	Forbidden	03	25
	Signals, smoke	1.3G	UN0487		1.3G		None	62	None	Forbidden	Forbidden	03	25
	*		*		*		*		*		*		*



	Sodium	4.3	UN1428	I	4.3	A7, A8, A19, A20, B9, B48, B68, IB4, IP1, N34, T9, TP7, TP33, TP46	151	211	244	Forbidden	15 kg	D	13, 52, 148
	*		*		*		*		*		*		*
	Sodium dinitro-o-cresolate, <u>dry or wetted with less than 15 percent water, by mass</u>	1.3C	UN0234		1.3C		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*		*		*		*		*
	Sodium picramate, <u>dry or wetted with less than 20 percent water, by mass</u>	1.3C	UN0235		1.3C		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*		*		*		*		*
	Sounding devices, explosive	1.2F	UN0204		1.2F		None	62	62	Forbidden	Forbidden	05	25
	Sounding devices, explosive	1.1F	UN0296		1.1F		None	62	62	Forbidden	Forbidden	05	25
	Sounding devices, explosive	1.1D	UN0374		1.1D		None	62	62	Forbidden	Forbidden	04	25
	Sounding devices, explosive	1.2D	UN0375		1.2D		None	62	62	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
G	Substances, explosive, n.o.s.	1.1L	UN0357		1.1L	101	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
G	Substances, explosive, n.o.s.	1.2L	UN0358		1.2L	101	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
G	Substances, explosive, n.o.s.	1.3L	UN0359		1.3L	101	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
G	Substances, explosive, n.o.s.	1.1A	UN0473		1.1A	101, 111	None	62	None	Forbidden	Forbidden	05	25
G	Substances, explosive, n.o.s.	1.1C	UN0474		1.1C	101	None	62	None	Forbidden	Forbidden	04	25
G	Substances, explosive, n.o.s.	1.1D	UN0475		1.1D	101	None	62	None	Forbidden	Forbidden	04	25
G	Substances, explosive, n.o.s.	1.1G	UN0476		1.1G	101	None	62	None	Forbidden	Forbidden	03	25
G	Substances, explosive, n.o.s.	1.3C	UN0477		1.3C	101	None	62	None	Forbidden	Forbidden	04	25
G	Substances, explosive, n.o.s.	1.3G	UN0478		1.3G	101	None	62	None	Forbidden	Forbidden	03	25
G	Substances, explosive, n.o.s.	1.4C	UN0479		1.4C	101	None	62	None	Forbidden	75 kg	02	25
G	Substances, explosive, n.o.s.	1.4D	UN0480		1.4D	101	None	62	None	Forbidden	75 kg	02	25
G	Substances, explosive, n.o.s.	1.4S	UN0481		1.4S	101	None	62	None	25 kg	75 kg	01	25
G	Substances, explosive, n.o.s.	1.4G	UN0485		1.4G	101	None	62	None	Forbidden	75 kg	02	25
G	Substances, explosive, very insensitive, n.o.s. or Substances, EVI, n.o.s.	1.5D	UN0482		1.5D	101	None	62	None	Forbidden	Forbidden	03	25
	Substituted nitrophenol pesticides, liquid,	3	UN2780	I	3, 6.1	T14, TP2,	None	201	243	Forbidden	30 L	B	40

	flammable, toxic, flash point less than 23 degrees C					TP13, TP27							
				II	3, 6.1	IB2, T11, TP2, TP13, TP27	150	202	243	1 L	60 L	B	40
	*		*		*		*		*		*		*
	Tetranitroaniline	1.1D	UN0207		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Tetrazol-1-acetic acid	1.4C	UN0407		1.4C		None	62	None	Forbidden	75 kg	02	25
	*		*		*		*		*		*		*
	Torpedoes, liquid fueled, with inert head	1.3J	UN0450		1.3J			62	None	Forbidden	Forbidden	05	25, 23E
	Torpedoes, liquid fueled, with or without bursting charge	1.1J	UN0449		1.1J			62	None	Forbidden	Forbidden	05	25, 23E
	Torpedoes with bursting charge	1.1E	UN0329		1.1E			62	62	Forbidden	Forbidden	04	25
	Torpedoes with bursting charge	1.1F	UN0330		1.1F			62	None	Forbidden	Forbidden	05	25
	Torpedoes with bursting charge	1.1D	UN0451		1.1D			62	62	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
D	Toy Caps	1.4S	NA0337		1.4S		None	62	None	25 kg	100 kg	01	25
	Tracers for ammunition	1.3G	UN0212		1.3G		None	62	None	Forbidden	Forbidden	03	25
	Tracers for ammunition	1.4G	UN0306		1.4G		None	62	None	Forbidden	75 kg	02	25
	*		*		*		*		*		*		*
	Trinitro-m-cresol	1.1D	UN0216		1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*		*		*		*		*
	Trinitroaniline or Picramide	1.1D	UN0153		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Trinitroanisole	1.1D	UN0213		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Trinitrobenzene, dry or wetted with less than 30 percent water, by mass	1.1D	UN0214		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Trinitrobenzenesulfonic acid	1.1D	UN0386		1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E
	Trinitrobenzoic acid, dry or wetted with less than 30 percent water, by mass	1.1D	UN0215		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Trinitrochlorobenzene or Picryl chloride	1.1D	UN0155		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Trinitrofluorenone	1.1D	UN0387		1.1D		None	62	None	Forbidden	Forbidden	04	25

	*		*		*		*		*		*		*
	Trinitronaphthalene	1.1D	UN0217		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Trinitrophenetole	1.1D	UN0218		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Trinitrophenol (picric acid), wetted, <u>with not less than 10 percent water by mass</u>	4.1	UN3364	I	4.1	23, A8, A19, N41, N84	None	211	None	0.5 kg	0.5 kg	E	28, 36
	Trinitrophenol or Picric acid, <u>dry or wetted with less than 30 percent water, by mass</u>	1.1D	UN0154		1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E
	Trinitrophenol, wetted <u>with not less than 30 percent water, by mass</u>	4.1	UN1344	I	4.1	162, A8, A19, N41	None	211	None	1 kg	15 kg	E	28, 36
	*		*		*		*		*		*		*
	Trinitrophenylmethylnitramine or Tetryl	1.1D	UN0208		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Trinitroresorcinol or Styphnic acid, <u>dry or wetted with less than 20 percent water, or mixture of alcohol and water, by mass</u>	1.1D	UN0219		1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E
	Trinitroresorcinol, wetted or Styphnic acid, wetted <u>with not less than 20 percent water, or mixture of alcohol and water by mass</u>	1.1D	UN0394		1.1D	385	None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*		*		*		*		*
	Trinitrotoluene and Trinitrobenzene mixtures or TNT and trinitrobenzene mixtures or TNT and hexanitrostilbene mixtures or Trinitrotoluene and hexanitrostilbene mixtures	1.1D	UN0388		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Trinitrotoluene mixtures containing Trinitrobenzene and Hexanitrostilbene or TNT mixtures containing trinitrobenzene and hexanitrostilbene	1.1D	UN0389		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Trinitrotoluene or TNT, <u>dry or wetted with less than 30 percent water, by mass</u>	1.1D	UN0209		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Tritonal	1.1D	UN0390		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Urea nitrate, <u>dry or wetted with less than 20 percent water, by mass</u>	1.1D	UN0220		1.1D	119	None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Warheads, rocket with burster or expelling charge	1.4D	UN0370		1.4D		None	62	62	Forbidden	75 kg	02	25
	Warheads, rocket with burster or expelling charge	1.4F	UN0371		1.4F		None	62	None	Forbidden	Forbidden	05	25
	Warheads, rocket with bursting charge	1.1D	UN0286		1.1D		None	62	62	Forbidden	Forbidden	04	25



\* \* \* \* \*

**BILLING CODE 4910-60-C**

■ 10. In § 172.102, in paragraph (c)(1), revise special provision 136 to read as follows:

**§ 172.102 Special provisions.**

\* \* \* \* \*  
(c) \* \* \*  
(1) \* \* \*

136 This entry only applies to machinery and apparatus containing hazardous materials as an integral element of the machinery or apparatus. It may not be used to describe machinery or apparatus for which a proper shipping name exists in the § 172.101 Table. Except when approved by the Associate Administrator, machinery or apparatus may only contain hazardous materials for which exceptions are referenced in Column (8) of the § 172.101 Table and are provided in part 173, subparts D and G, of this subchapter. Hazardous materials shipped under this entry are excepted from the labeling requirements of this subchapter unless offered for transportation or transported by aircraft and are not subject to the placarding requirements of subpart F of this part. Orientation markings as described in § 172.312(a)(2) are required when liquid hazardous materials may escape due to incorrect orientation. The machinery or apparatus, if unpackaged, or the packaging in which it is contained shall be marked "Dangerous goods in machinery" or "Dangerous goods in apparatus," as appropriate, with the identification number UN3363. For transportation by aircraft, machinery or apparatus may not contain any material forbidden for transportation by passenger or cargo aircraft. The Associate Administrator may except from the requirements of this subchapter equipment, machinery and apparatus provided:

- a. It is shown that it does not pose a significant risk in transportation;
- b. The quantities of hazardous materials do not exceed those specified in § 173.4a of this subchapter; and
- c. The equipment, machinery or apparatus conforms with § 173.222 of this subchapter.

\* \* \* \* \*

■ 11. In § 172.201, revise paragraph (d) to read as follows:

**§ 172.201 Preparation and retention of shipping papers.**

\* \* \* \* \*

(d) *Emergency response telephone number.* Except as provided in § 172.604(d), a shipping paper must contain an emergency response telephone number and, if utilizing an

emergency response information telephone number service provider, identify the person (by name or contract number) who has a contractual agreement with the service provider, as prescribed in subpart G of this part.

\* \* \* \* \*

■ 12. In § 172.301, revise paragraph (f) to read as follows:

**§ 172.301 General marking requirements for non-bulk packagings.**

\* \* \* \* \*

(f) *NON-ODORIZED marking on cylinders containing LPG.* No person may offer for transportation or transport a specification cylinder, except a Specification 2P or 2Q container or a Specification 39 cylinder, containing unodorized liquefied petroleum gas (LPG) unless it is legibly marked NON-ODORIZED or NOT ODORIZED in letters not less than 6.3 mm (0.25 inches) in height near the marked proper shipping name required by paragraph (a) of this section. The NON-ODORIZED or NOT ODORIZED marking may appear on a cylinder used for both unodorized and odorized LPG.

■ 13. In § 172.326, paragraph (d) is revised to read as follows:

**§ 172.326 Portable tanks.**

\* \* \* \* \*

(d) *NON-ODORIZED marking on portable tanks containing LPG.* No person may offer for transportation or transport a portable tank containing unodorized liquefied petroleum gas (LPG) as authorized in § 173.315(b)(1) of this subchapter unless it is legibly marked NON-ODORIZED or NOT ODORIZED on two opposing sides near the marked proper shipping name required by paragraph (a) of this section, or near the placards. The NON-ODORIZED or NOT ODORIZED marking may appear on a portable tank used for both unodorized and odorized LPG.

■ 14. In § 172.328, revise paragraph (e) to read as follows:

**§ 172.328 Cargo tanks.**

\* \* \* \* \*

(e) *NON-ODORIZED marking on cargo tanks containing LPG.* No person may offer for transportation or transport a cargo tank containing unodorized liquefied petroleum gas (LPG) as authorized in § 173.315(b)(1) of this subchapter unless it is legibly marked NON-ODORIZED or NOT ODORIZED on two opposing sides near the marked proper shipping name as specified in paragraph (b)(1) of this section, or near the placards. The NON-ODORIZED or NOT ODORIZED marking may appear on a cargo tank used for both unodorized and odorized LPG.

■ 15. In § 172.330, revise paragraph (c) to read as follows:

**§ 172.330 Tank cars and multi-unit tank car tanks.**

\* \* \* \* \*

(c) No person may offer for transportation or transport a tank car or multi-unit tank car tank containing unodorized liquefied petroleum gas (LPG) unless it is legibly marked NON-ODORIZED or NOT ODORIZED on two opposing sides near the marked proper shipping name required by paragraphs (a)(1) and (2) of this section, or near the placards. The NON-ODORIZED or NOT ODORIZED marking may appear on a tank car or multi-unit tank car tank used for both unodorized and odorized LPG.

■ 16. In § 172.406, revise paragraph (d) to read as follows:

**§ 172.406 Placement of labels.**

\* \* \* \* \*

(d) *Contrast with background.* Each label must be printed on or affixed to a background color contrasting to the color specification of the label as required by § 172.407(d)(1), or must have a dotted or solid line outer border, to enhance the visibility of the label. However, the dotted or solid line outer border may also be used for backgrounds of contrasting color.

\* \* \* \* \*

■ 17. In § 172.407, revise paragraph (d)(4)(ii) to read as follows:

**§ 172.407 Label specifications.**

\* \* \* \* \*

- (d) \* \* \*  
(4) \* \* \*  
(ii) Color charts conforming to appendix A to this part are on display at the Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 2nd Floor, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

\* \* \* \* \*

■ 18. In § 172.514, paragraph (c)(4) is revised to read as follows:

**§ 172.514 Bulk Packagings.**

\* \* \* \* \*

(c) \* \* \*  
(4) *An IBC.* For an IBC labeled in accordance with subpart E of this part, the IBC may display the proper shipping name and UN identification number markings in accordance with § 172.301(a)(1) in place of the UN number on an orange panel, placard or white square-on-point configuration as prescribed in § 172.336(d); and

\* \* \* \* \*

■ 19. In § 172.604, revise paragraph (a) introductory text to read as follows:

**§ 172.604 Emergency response telephone number.**

(a) A person who offers a hazardous material for transportation must provide a numeric emergency response telephone number, including the area code, for use in an emergency involving the hazardous material. For telephone numbers outside the United States, the international access code or the “+” (plus) sign, country code, and city code, as appropriate, that are needed to complete the call must be included. The telephone number must be—

\* \* \* \* \*

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS**

■ 20. The authority citation for part 173 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 21. In § 173.4a, revise paragraph (a) introductory text to read as follows:

**§ 173.4a Excepted quantities.**

(a) Excepted quantities of materials, other than articles (e.g., aerosols), are not subject to requirements of this subchapter except for:

\* \* \* \* \*

■ 22. In § 173.24a, paragraph (c)(1)(iv) is revised to read as follows:

**§ 173.24a Additional general requirements for non-bulk packagings and packages.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iv) For transportation by aircraft, the total net quantity does not exceed the lowest permitted maximum net quantity per package as shown in Column (9a) or (9b), as appropriate, of the § 172.101 Table of this subchapter. The permitted maximum net quantity must be calculated in kilograms if a package contains both a liquid and a solid. These requirements do not apply to limited quantity hazardous materials packaged in accordance with § 173.27(f)(2).

\* \* \* \* \*

■ 23. In § 173.27, revise the paragraph (f)(2)(i) introductory text to read as follows:

**§ 173.27 General requirements for transportation by aircraft.**

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(i) Unless otherwise specified in this part, or in subpart C of part 171 of this

subchapter, when a limited quantity of hazardous material packaged in a combination packaging is intended for transportation aboard an aircraft, the inner and outer packagings must conform to the quantity limitations set forth in Table 3 of this paragraph (f). Materials and articles must be authorized for transportation aboard a passenger-carrying aircraft (see Column (9A) of the § 172.101 Hazardous Materials Table of this subchapter). Not all unauthorized materials or articles may be indicated in this table. For mixed content packages of limited quantity material, the total net quantity must not exceed the lowest permitted maximum net quantity (for each of the hazard classes or divisions represented in the package) per outer package set forth in Table 3 of this paragraph (f). The permitted maximum net quantity must be calculated in kilograms for a package that contains both a solid and a liquid. Unless otherwise excepted, packages must be marked and labeled in accordance with this section and any additional requirements in subparts D and E, respectively, of part 172 of this subchapter. Materials or articles not authorized as limited quantity by aircraft are:

\* \* \* \* \*

■ 24. In § 173.150, revise paragraphs (f)(3)(ix) and (x) and add paragraph (f)(3)(xi) to read as follows:

**§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).**

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

(ix) The training requirements of subpart H of part 172 of this subchapter;

(x) Emergency response information requirements of subpart G of part 172; and

(xi) For bulk packagings only, registration requirements of subpart G of part 107 of this subchapter.

\* \* \* \* \*

■ 25. In § 173.158, revise paragraph (e) to read as follows:

**§ 173.158 Nitric acid.**

\* \* \* \* \*

(e) Nitric acid of less than 90 percent concentration, when offered for transportation or transported by rail, highway, or water may be packaged in 4A, 4B, or 4N metal boxes, 4G fiberboard boxes or 4C1, 4C2, 4D or 4F wooden boxes with inside glass packagings of not over 2.5 L (0.66 gallon) capacity each. When placed in wooden or fiberboard outer packagings, the glass inner packagings must be packed in tightly-closed, intermediate

packagings, cushioned with an absorbent material. The intermediate packaging and absorbent material must be compatible with the nitric acid. See § 173.24(e).

\* \* \* \* \*

■ 26. In § 173.159, revise (e)(4) and add paragraph (k) to read as follows:

**§ 173.159 Batteries, wet.**

\* \* \* \* \*

(e) \* \* \*

(4) Except for the purpose of consolidating shipments of batteries for recycling, the transport vehicle may not carry material shipped by any person other than the shipper of the batteries; and

\* \* \* \* \*

(k) *Damaged wet electric storage batteries.* (1) Damaged batteries incapable of retaining battery fluid inside the outer casing during transportation may be transported by highway or rail provided the batteries are transported in non-bulk packaging, meet the requirements of paragraph (a) of this section, and are prepared for transport under one or more of the following conditions:

(i) Drain the battery of fluid to eliminate the potential for leakage during transportation;

(ii) Individually pack the battery in a leak proof intermediate package with sufficient compatible absorbent material capable of absorbing the release of any electrolyte and place the intermediate packaging in a leakproof outer packaging that conforms to the general packaging requirements of subpart B of this part;

(iii) Pack the battery in a salvage packaging in accordance with the provisions of § 173.3(c); or

(iv) When packaged with other batteries or materials (e.g., on pallets or non-skid rails) and secured to prevent movement during transport, pack the battery in leakproof packaging to prevent leakage of battery fluid from the packaging under conditions normally incident to transportation.

(2) Shipment of damage batteries in accordance with this paragraph is eligible for exception under paragraph (e) of this section.

■ 27. In § 173.166, revise the paragraph (e)(6) introductory text to read as follows:

**§ 173.166 Safety devices.**

\* \* \* \* \*

(e) \* \* \*

(6) *Safety devices removed from a vehicle.* When removed from, or were intended to be used in, a motor vehicle that was manufactured as required for

use in the United States and offered for domestic transportation by highway or cargo vessel to Recycling or Waste Disposal facilities, a serviceable safety device classed as Class 9 UN3268 may be offered for transportation and transported in the following additional packaging:

\* \* \* \* \*

■ 28. In § 173.170, revise paragraph (b) to read as follows:

**§ 173.170 Black powder for small arms.**

\* \* \* \* \*

(b) The total quantity of black powder in one transport vehicle or freight container may not exceed 45.4 kg (100 pounds) net mass. No more than four freight containers may be on board one cargo vessel;

\* \* \* \* \*

■ 29. In § 173.171, revise paragraph (b)(1) to read as follows:

**§ 173.171 Smokeless powder for small arms.**

\* \* \* \* \*

(b) \* \* \*

(1) One transport vehicle or cargo-only aircraft; or

\* \* \* \* \*

■ 30. In § 173.199, revise paragraph (a)(4) to read as follows:

**§ 173.199 Category B infectious substances.**

(a) \* \* \*

(4) The completed package must be designed, constructed, maintained, filled, its contents limited, and closed so that under conditions normally encountered in transportation, including removal from a pallet or overpack for subsequent handling, there will be no release of hazardous material into the environment. Package effectiveness must not be substantially reduced for minimum and maximum

temperatures, changes in humidity and pressure, and shocks, loadings and vibrations normally encountered during transportation. The packaging must be capable of successfully passing the drop test in § 178.609(d) of this subchapter at a drop height of at least 1.2 meters (3.9 feet). Following the drop test, there must be no leakage from the primary receptacle, which must remain protected by absorbent material, when required, in the secondary packaging. At least one surface of the outer packaging must have a minimum dimension of 100 mm by 100 mm (3.9 inches).

\* \* \* \* \*

■ 31. In § 173.225, revise the table in paragraph (d)(4) to read as follows:

**§ 173.225 Packaging requirements and other provisions for organic peroxides.**

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

**MAXIMUM QUANTITY PER PACKAGING/PACKAGE**

[For packing methods OP1 to OP8]

Maximum quantity	Packing method							
	OP1	OP2 <sup>1</sup>	OP3	OP4 <sup>1</sup>	OP5	OP6	OP7	OP8
Solids and combination packagings (liquid and solid) (kg) .....	0.5	0.5/10	5	5/25	25	50	50	<sup>2</sup> 400
Liquids (L) .....	0.5	.....	5	.....	30	60	60	<sup>3</sup> 225

<sup>1</sup> If two values are given, the first applies to the maximum net mass per inner packaging and the second to the maximum net mass of the complete package.

<sup>2</sup> 60 kg for jerricans/200 kg for boxes and, for solids, 400 kg in combination packagings with outer packagings comprising boxes (4C1, 4C2, 4D, 4F, 4G, 4H1, and 4H2) and with inner packagings of plastics or fiber with a maximum net mass of 25 kg.

<sup>3</sup> 60 L for jerricans.

\* \* \* \* \*

■ 32. In § 173.301, revise paragraph (g)(1)(iii) to read as follows:

**§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical pressure vessels.**

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(iii) Acetylene as authorized by § 173.303. Mobile acetylene trailers must be maintained, operated and transported in accordance with CGA G-1.6 (IBR, see § 171.7 of this subchapter).

\* \* \* \* \*

■ 33. In § 173.306, revise paragraph (k)(1) to read as follows:

**§ 173.306 Limited quantities of compressed gases.**

\* \* \* \* \*

(k) \* \* \*

(1) Aerosols conforming to paragraph (a)(3), (a)(5), (b)(1), (b)(2), or (b)(3) of this section are excepted from the

labeling requirements of subpart E of part 172 this subchapter, the specification packaging requirements of this subchapter when packaged in accordance with this paragraph, the shipping paper requirements of subpart C of part 172 of this subchapter (unless the material meets the definition of a hazardous substance or hazardous waste), and the 30 kg (66 pounds) gross weight limitation, when transported by motor vehicle for purposes of recycling or disposal under the following conditions:

(i) The aerosols must be packaged in a strong outer packaging. The strong outer packaging and its contents must not exceed a gross weight of 500 kg (1,100 pounds);

(ii) Each aerosol must be secured with a cap to protect the valve stem or the valve stem must be removed;

(iii) Each completed package must be marked in accordance with § 172.315(a); and

(iv) The packaging must be offered for transportation or transported by—

(A) Private or contract motor carrier; or

(B) Common carrier in a motor vehicle under exclusive use for such service.

\* \* \* \* \*

■ 34. In § 173.314, adding paragraph (h) to read as follows:

**§ 173.314 Compressed gases in tank cars and multi-unit tank cars.**

\* \* \* \* \*

(h) *Special requirements for liquefied petroleum gas—(1) Odorization.* All liquefied petroleum gas must be odorized as required in this paragraph to indicate positively, by a distinctive odor, the presence of gas down to a concentration in air of not over one-fifth the lower limit of combustibility; however, odorization is not required if it is harmful in the use or further processing of the liquefied petroleum gas or if it will serve no useful purpose as a warning agent in such use or further processing.

(i) The lower limits of combustibility of the more commonly used liquefied

petroleum gases are: Propane, 2.15 percent; butane, 1.55 percent. These figures represent volumetric percentages of gas-air mixtures in each case.

(ii) The use of 1.0 pound of ethyl mercaptan per 10,000 gallons of liquefied petroleum gas is considered sufficient to meet the requirements of this paragraph. Use of another odorant is not prohibited so long as there is enough to meet the requirements of this paragraph (h).

(2) *Odorant fade.* In addition to paragraph (h)(1)(i) of this section, the offeror must ensure that enough odorant will remain in the tank car during the course of transportation. The shipper must have procedures in place to:

(i) Ensure quantitative testing methods are used to measure the amount of odorant in the liquefied petroleum gas;

(ii) Ensure that, when the odorization of liquefied petroleum gas is manually injected, the required amount of odorant is added;

(iii) Ensure that, when odorization of liquefied petroleum gas is automatically injected, equipment calibration checks are conducted to ensure the required amount of odorant is consistently added;

(iv) Ensure quality control measures are in place to make sure that persons who receive tank cars that have been subjected to any condition that could lead to corrosion of the tank car or receive new or recently cleaned tank cars are notified of this information and that a person filling these packagings implement quality control measures so that potential odorant fade is addressed;

(v) Inspect a tank car for signs of oxidation or corrosion; and

(vi) Take corrective action needed to ensure enough odorization remains in the tank car during the course of transportation, such as increasing the amount of odorant added to the liquefied petroleum gas.

\* \* \* \* \*

■ 35. In § 173.315, revise paragraph (b)(1) and add paragraph (b)(2) to read as follows:

**§ 173.315 Compressed gases in cargo tanks and portable tanks.**

\* \* \* \* \*

(b) \* \* \*

(1) *Odorization.* All liquefied petroleum gas must be odorized as required in this paragraph to indicate positively, by a distinctive odor, the presence of gas down to a concentration in air of not over one-fifth the lower limit of combustibility; however, odorization is not required if it is harmful in the use or further processing

of the liquefied petroleum gas or if it will serve no useful purpose as a warning agent in such use or further processing.

(i) The lower limits of combustibility of the more commonly used liquefied petroleum gases are: Propane, 2.15 percent; butane, 1.55 percent. These figures represent volumetric percentages of gas-air mixtures in each case.

(ii) The use of 1.0 pound of ethyl mercaptan per 10,000 gallons of liquefied petroleum gas is considered sufficient to meet the requirements of this paragraph (b). Use of any other odorant is not prohibited so long as there is enough to meet the requirements of this paragraph.

(2) *Odorant fade.* For cargo tanks or portable tanks being transported from a refinery, gas plant or pipeline terminal and in addition to paragraph (b)(1)(i) of this section, the offeror must ensure that enough odorant will remain in the cargo tank or portable tank during the course of transportation. The shipper must have procedures in place to:

(i) Ensure quantitative testing methods are used to measure the amount of odorant in the liquefied petroleum gas;

(ii) Ensure that, when the odorization of liquefied petroleum gas is manually injected, the required amount of odorant is being added;

(iii) Ensure that, when odorization of liquefied petroleum gas is automatically injected, equipment calibration checks are conducted to ensure the required amount of odorant is consistently added;

(iv) Ensure that quality control measures are in place to make sure that persons who receive cargo tanks or portable tanks that have been subjected to any condition that could lead to corrosion of the packaging or receive new or recently cleaned cargo tanks or portable tanks are notified of this information and that a person filling these packagings implement quality control measures to ensure that potential odorant fade is addressed;

(v) Inspect a cargo tank or portable tank for signs of oxidation or corrosion; and

(vi) Take corrective action needed to ensure enough odorant remains in the cargo tank or portable tank during the course of transportation, such as increasing the amount of odorant added to the liquefied petroleum gas.

\* \* \* \* \*

**PART 175—CARRIAGE BY AIR**

■ 36. The authority citation for part 175 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128; 44701; 49 CFR 1.81 and 1.97.

■ 37. In § 175.1, add paragraph (d) to read as follows:

**§ 175.1 Purpose, scope and applicability.**

\* \* \* \* \*

(d) The requirements of this subchapter do not apply to transportation of hazardous material in support of dedicated air ambulance, firefighting, or search and rescue operations performed in compliance with the operator requirements under federal air regulations, title 14 of the CFR.

■ 38. In § 175.8, revise paragraph (b)(1) to read as follows:

**§ 175.8 Exceptions for operator equipment and items of replacement.**

\* \* \* \* \*

(b) \* \* \*

(1) Oxygen, or any hazardous material used for the generation of oxygen, for medical use by a passenger, which is furnished by the aircraft operator in accordance with 14 CFR 121.574, 125.219, or 135.91. For the purposes of this paragraph (b)(1), an aircraft operator that does not hold a certificate under 14 CFR parts 121, 125, or 135 may apply this exception in conformance with 14 CFR 121.574, 125.219, or 135.91 in the same manner as required for a certificate holder. See § 175.501 for additional requirements applicable to the stowage of oxygen.

\* \* \* \* \*

**§ 175.9 [Amended]**

■ 39. In § 175.9, remove and reserve paragraph (b)(4).

■ 40. In § 175.10, revise paragraphs (a)(6), (23), and (25) to read as follows:

**§ 175.10 Exceptions for passengers, crewmembers, and air operators.**

(a) \* \* \*

(6) Hair curlers (curling irons) containing a hydrocarbon gas such as butane, no more than one per person, in carry-on baggage only. The safety cover must be securely fitted over the heating element. Gas refills for such curlers are not permitted in carry-on or checked baggage.

\* \* \* \* \*

(23) Non-infectious specimens in preservative solutions transported in accordance with § 173.4b(b) of this subchapter.

\* \* \* \* \*

(25) Small cartridges fitted into or securely packed with devices with no more than four small cartridges of carbon dioxide or other suitable gas in Division 2.2, without subsidiary risk



with the approval of the operator. The water capacity of each cartridge must not exceed 50 mL (equivalent to a 28 g cartridge).

\* \* \* \* \*

■ 41. In § 175.75, revise paragraph (e)(2) to read as follows:

§ 175.75 Quantity limitations and cargo location.

\* \* \* \* \*

(e) \* \* \*

(2) Packages of hazardous materials transported aboard a cargo aircraft, when other means of transportation are impracticable or not available, in accordance with procedures approved in writing by the FAA Regional Office in the region where the operator is certificated.

\* \* \* \* \*

PART 176—CARRIAGE BY VESSEL

■ 42. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 43. In § 176.30, revise paragraph (a)(4) to read as follows:

§ 176.30 Dangerous cargo manifest.

(a) \* \* \*

(4) The number and description of packages (barrels, drums, cylinders, boxes, etc.) and gross weight for each type of package;

\* \* \* \* \*

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 44. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; sec. 112 of Pub. L. 103–311, 108 Stat. 1673, 1676 (1994); sec. 32509 of Pub. L. 112–141, 126 Stat. 405, 805 (2012); 49 CFR 1.81 and 1.97.

■ 45. In § 177.834, revise paragraphs (i)(3) and (4) to read as follows:

§ 177.834 General requirements.

\* \* \* \* \*

(i) \* \* \*

(3) A qualified person “attends” the loading or unloading of a cargo tank only if, throughout the process:

(i) Except for unloading operations subject to §§ 177.837(d) and 177.840(p) and (q), the qualified person is within 7.62 m (25 feet) of the cargo tank. The qualified person attending the unloading of a cargo tank must be alert and have an unobstructed view of the cargo tank and delivery hose to the maximum extent practicable during the unloading operation; or

(ii) The qualified person observes all loading or unloading operations by

means of video cameras and monitors or instrumentation and signaling systems such as sensors, alarms, and electronic surveillance equipment located at a remote control station, and the loading or unloading system is equipped as follows:

(A) For a video monitoring system used to meet the attendance requirement, the camera must be mounted so as to provide an unobstructed view of all equipment involved in the loading or unloading operations, including all valves, hoses, domes, and pressure relief devices;

(B) For an instrumentation and signaling system used to meet the attendance requirement, the system must provide a surveillance capability at least equal to that of a human observer;

(C) Upon loss of video monitoring capability or instrumentation and signaling systems, loading or unloading operations must be immediately terminated;

(D) Shut-off valves operable from the remote control station must be provided;

(E) In the event of a remote system failure, a qualified person must immediately resume attending the loading or unloading of the cargo tank as provided in paragraph (i)(3)(i) of this section;

(F) A containment area must be provided capable of holding the contents of as many cargo tank motor vehicles as might be loaded at any single time; and

(G) A qualified person must personally conduct a visual inspection of each cargo tank motor vehicle after it is loaded, prior to departure, for any damage that may have occurred during loading; or

(iii) Hoses used in the loading or unloading operations are equipped with cable-connected wedges, plungers, or flapper valves located at each end of the hose, able to stop the flow of product from both the source and the receiving tank within one second without human intervention in the event of a hose rupture, disconnection, or separation.

(A) Prior to each use, each hose must be inspected to ensure that it is of sound quality, without defects detectable through visual observation; and

(B) The loading or unloading operations must be physically inspected by a qualified person at least once every sixty (60) minutes.

(4) A person is “qualified” if he has been made aware of the nature of the hazardous material which is to be loaded or unloaded, has been instructed on the procedures to be followed in emergencies, and except for persons

observing loading or unloading operations by means of video cameras and monitors or instrumentation and signaling systems such as sensors, alarms, and electronic surveillance equipment located at a remote control station and persons inspecting hoses in accordance with paragraph (i)(3)(iii) of this section, is authorized to move the cargo tank, and has the means to do so.

\* \* \* \* \*

■ 46. In § 177.840, add paragraph (a)(4) to read as follows:

§ 177.840 Class 2 (gases) materials.

\* \* \* \* \*

(a) \* \* \*

(4) Cylinders for acetylene. Cylinders containing acetylene and manifolded as part of a mobile acetylene trailer system must be transported in accordance with § 173.301(g) of this subchapter.

\* \* \* \* \*

■ 47. In § 177.848, revise paragraph (e)(5) to read as follows:

§ 177.848 Segregation of hazardous materials.

\* \* \* \* \*

(e) \* \* \*

(5) The note “A” in the second column of the table means that, notwithstanding the requirements of the letter “X”, ammonium nitrate (UN1942) and ammonium nitrate fertilizer may be loaded or stored with Division 1.1 (explosive) or Division 1.5 materials, unless otherwise prohibited by § 177.835(c).

\* \* \* \* \*

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 48. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 49. In § 178.337–17, revise paragraph (a) introductory text to read as follows:

§ 178.337–17 Marking.

(a) General. Each cargo tank certified after October 1, 2004 must have a corrosion-resistant metal name plate (ASME Plate); and each cargo tank motor vehicle certified after October 1, 2004 must have a specification plate, permanently attached to the cargo tank by brazing, welding, or other suitable means on the left side near the front, in a place accessible for inspection. If the specification plate is attached directly to the cargo tank wall by welding, it must be welded to the tank before the cargo tank is postweld heat treated.

\* \* \* \* \*

■ 50. In § 178.345–3, revise the paragraph (c)(1) introductory text and formula to read as follows:

**§ 178.345–3 Structural integrity.**

\* \* \* \* \*

(c) \* \* \*

(1) *Normal operating loadings.* The following procedure addresses stress in the cargo tank shell resulting from normal operating loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$$S = 0.5(S_y + S_x) \pm [0.25(S_y - S_x)^2 + S_S^2]^{0.5}$$

\* \* \* \* \*

■ 51. In § 178.955, redesignate paragraphs (h) and (i) as paragraphs (i) and (j), respectively, and add new paragraph (h) to read as follows:

**§ 178.955 General requirements.**

\* \* \* \* \*

(h) *Approval of equivalent packagings.* A Large Packaging differing from standards in subpart P of this part, or tested using methods other than those specified in this subpart, may be used if approved by the Associate Administrator. The Large Packagings and testing methods must be shown to have an equivalent level of safety.

\* \* \* \* \*

**PART 179—SPECIFICATIONS FOR TANK CARS**

■ 52. The authority citation for part 179 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 53. In § 179.13, revise paragraph (b) to read as follows:

**§ 179.13 Tank car capacity and gross weight limitation.**

\* \* \* \* \*

(b) Tank cars containing poisonous-by-inhalation material meeting the applicable authorized tank car specifications listed in § 173.244(a)(2) or (3) or § 173.314(c) or (d) of this subchapter may have a gross weight on rail of up to 286,000 pounds (129,727 kg). Tank cars containing poisonous-by-inhalation material not meeting the specifications listed in § 173.244(a)(2) or (3) or § 173.314(c) or (d) may be loaded to a gross weight on rail of up to 286,000 pounds (129,727 kg) only upon approval of the Associate Administrator for Safety, Federal Railroad Administration (FRA). Any increase in weight above 263,000 pounds may not be used to increase the quantity of the contents of the tank car.

■ 54. In § 179.24, revise the paragraph (a)(2) introductory text to read as follows:

**§ 179.24 Stamping.**

\* \* \* \* \*

(a) \* \* \*

(2) Each plate must be stamped, embossed, or otherwise marked by an equally durable method in letters 3/16 inch high with the following information (parenthetical abbreviations may be used, and the AAR form reference is to the applicable provisions

of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter):

\* \* \* \* \*

**PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS**

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

**Authority:** 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 56. In § 180.209, revise the paragraph (j) introductory text to read as follows:

**§ 180.209 Requirements for requalification of specification cylinders.**

\* \* \* \* \*

(j) *Cylinder used as a fire extinguisher.* Only a DOT specification cylinder used as a fire extinguisher and meeting the requirements of § 173.309(a) of this subchapter may be requalified in accordance with this paragraph (j).

\* \* \* \* \*

■ 57. In § 180.407:

■ a. In the table in paragraph (c), revise the entries for “Internal Visual Inspection” and “Pressure Test” and the notes to table;

■ b. Revise paragraphs (d)(3) and (g)(1)(ii) introductory text; and

■ c. Add paragraph (j).

The revisions and addition read as follows:

**§ 180.407 Requirements for test and inspection of specification cargo tanks.**

\* \* \* \* \*

(c) \* \* \*

**COMPLIANCE DATES—INSPECTIONS AND TEST UNDER § 180.407(c)**

Test or inspection (cargo tank specification, configuration, and service)	Date by which first test must be completed (see Note 1)	Interval period after first test
Internal Visual Inspection:		
All insulated cargo tanks, except MC 330, MC 331, MC 338 (see Note 4) .....	September 1, 1991 .....	1
All cargo tanks transporting lading corrosive to the tank .....	September 1, 1991 .....	1
MC 331 cargo tanks less than 3,500 gallons water capacity in dedicated propane service constructed of nonquenched and tempered NQT SA-612 steel (see Note 5).	September 1, 2016 .....	10
All other cargo tanks, except MC 338 .....	September 1, 1995 .....	5
Pressure Test (Hydrostatic or pneumatic) (See Notes 2 and 3):		
All cargo tanks which are insulated with no manhole or insulated and lined, except MC 338 ..	September 1, 1991 .....	1
All cargo tanks designed to be loaded by vacuum with full opening rear heads .....	September 1, 1992 .....	2
MC 330 and MC 331 cargo tanks in chlorine service .....	September 1, 1992 .....	2
MC 331 cargo tanks less than 3,500 gallons water capacity in dedicated propane service constructed of nonquenched and tempered NQT steel (See Note 5).	September 1, 2017 .....	10
All other cargo tanks .....	September 1, 1995 .....	5

**Note 1:** If a cargo tank is subject to an applicable inspection or test requirement under the regulations in effect on December 30, 1990, and the due date (as specified by a requirement in effect on December 30, 1990) for completing the required inspection or test occurs before the compliance date listed in table 1, the earlier date applies.

**Note 2:** Pressure testing is not required for MC 330 or MC 331 cargo tanks in dedicated sodium metal service.

**Note 3:** Pressure testing is not required for uninsulated lined cargo tanks, with a design pressure MAWP 15 psig or less, which receive an external visual inspection and lining inspection at least once each year.

**Note 4:** Insulated cargo tanks equipped with manholes or inspection openings may perform either an internal visual inspection in conjunction with the external visual inspection or a hydrostatic or pneumatic pressure-test of the cargo tank.

**Note 5:** A 10-year inspection interval period also applies to cargo tanks constructed of NQT SA-202, NQT SA-455, or NQT SA-612 steels provided the materials have full-size equivalent (FSE) Charpy vee notch (CVN) energy test data that demonstrated 75% shear-area ductility at 32 °F with an average of 3 or more samples >15 ft-lb FSE with no sample <10 ft-lb FSE.

(d) \* \* \*

(3) All reclosing pressure relief valves must be externally inspected for any corrosion or damage which might prevent safe operation. All reclosing pressure relief valves on cargo tanks carrying lading corrosive to the valve must be removed from the cargo tank for inspection and testing. Each reclosing pressure relief valve required to be removed and tested must be tested according to the requirements set forth in paragraph (j) of this section.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(ii) All self-closing pressure relief valves, including emergency relief vents and normal vents, must be removed from the cargo tank for inspection and testing according to the requirements in paragraph (j) of this section.

\* \* \* \* \*

(j) *Pressure vent bench test.* When required by this section, pressure relief valves must be tested for proper function as follows:

(1) Each self-closing pressure relief valve must open and reseal to a leaktight condition at the pressures prescribed for the applicable cargo tank specification or at the following pressures:

(i) For MC 306 cargo tanks:

(A) With MC 306 reclosing pressure relief valves, it must open at not less than 3 psi and not more than 4.4 psi and must reseal to a leak tight-condition at no less than 2.7 psi.

(B) With reclosing pressure relief valves modified as provided in § 180.405(c) to conform with DOT 406 specifications, according to the pressures set forth for a DOT 406 cargo tank in § 178.346-3 of this subchapter.

(ii) For MC 307 cargo tanks:

(A) With MC 307 reclosing pressure relief valves, it must open at not less than the cargo tank MAWP and not more than 110% of the cargo tank MAWP and must reseal to a leak tight-condition at no less than 90% of the cargo tank MAWP.

(B) With reclosing pressure relief valves modified as provided in § 180.405(c) to conform with DOT 407 specifications, according to the pressures set forth for a DOT 407 cargo tank in § 178.347-4 of this subchapter.

(iii) For MC 312 cargo tanks:

(A) With MC 312 reclosing pressure relief valves, it must open at not less than the cargo tank MAWP and not more than 110% of the cargo tank MAWP and must reseal to a leak tight-condition at no less than 90% of the cargo tank MAWP.

(B) With reclosing pressure relief valves modified as provided in § 180.405(c) to conform with DOT 412 specifications, according to the pressures set forth for a DOT 412 cargo tank in § 178.348-4 of this subchapter.

(iv) For MC 330 or MC 331 cargo tanks, it must open at not less than the required set pressure and not more than 110% of the required set pressure and must reseal to a leak-tight condition at

no less than 90% of the required set pressure.

(v) For DOT 400-series cargo tanks, according to the pressures set forth for the applicable cargo tank specification in §§ 178.346-3, 178.347-4, and 178.348-4, respectively, of this subchapter.

(vi) For cargo tanks not specified in this paragraph, it must open at not less than the required set pressure and not more than 110% of the required set pressure and must reseal to a leak-tight condition at no less than 90% of the required set pressure or the pressure prescribed for the applicable cargo tank specification.

(2) Normal vents (1 psig vents) must be tested according to the testing criteria established by the valve manufacturer.

(3) Self-closing pressure relief devices not tested or failing the tests in paragraph (j)(1) of this section must be repaired or replaced.

#### § 180.503 [Amended]

■ 58. In § 180.503, under the definition of “Qualification”, “AAR Tank Car Manual” is removed and “AAR Specifications for Tank Cars” is added in its place.

Issued in Washington, DC, on May 17, 2016, under authority delegated in 49 CFR part 1.97.

**Marie Therese Dominguez,**  
*Administrator, Pipeline and Hazardous  
Materials Safety Administration.*

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Part IV

## Department of Commerce

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National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to BlueCrest Alaska Operating, LLC Drilling Activities at Cosmopolitan State Unit, Alaska, 2016; Notice

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

RIN 0648-XE497

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to BlueCrest Alaska Operating, LLC Drilling Activities at Cosmopolitan State Unit, Alaska, 2016**

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments.

**SUMMARY:** NMFS has received an application from BlueCrest Alaska Operating, LLC (BlueCrest) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting an oil and gas production drilling program in lower Cook Inlet, AK, on State of Alaska Oil and Gas Lease 384403 under the program name of Cosmopolitan State during the 2016 open water season. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to BlueCrest to incidentally take, by Level B harassment only, marine mammals during the specified activity.

**DATES:** Comments and information must be received no later than July 5, 2016.

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is [ITP.Youngkin@noaa.gov](mailto:ITP.Youngkin@noaa.gov). NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.nmfs.noaa.gov/pr/permits/incidental.htm> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

An electronic copy of the application, NMFS' Draft Programmatic

Environmental Assessment (EA) for activities in Cook Inlet, and a list of the references used in this document may be obtained by visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. In case of problems accessing these documents, please call the contact listed below. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Dale Youngkin, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:****Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking; other means of effecting the least practicable impact on the species or stock and its habitat; and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. 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 September 28, 2015 NMFS received an IHA application from

BlueCrest for the taking of marine mammals incidental to an oil and gas production drilling program in lower Cook Inlet, AK, during the 2016 open water season. Typically, the open water (*i.e.*, ice-free) season is mid-April through October; however, BlueCrest would only operate during a portion of this season, from August 1, 2016 through October 31, 2016. NMFS determined that the application was adequate and complete on April 12, 2016.

BlueCrest proposes to conduct an oil and gas production drilling program using the *Spartan 151* drill rig (or similar rig) in lower Cook Inlet. This work would include drilling up to three wells with a total operating time of approximately 91 days during the 2016 open-water season, (August 1 through October 31). In 2013, BlueCrest, then in partnership with Buccaneer Energy, conducted exploratory oil and gas drilling at the Cosmopolitan State #A-1 well site (then called Cosmopolitan State #1). Beginning in 2016, BlueCrest intends to drill two more wells (Cosmopolitan State #A-2 and #A-3). These directionally drilled wells have top holes located a few meters from the original Cosmopolitan State #A-1, and together would feed to a future single offshore platform. Both #A-2 and #A-3 may involve test drilling into oil layers. After testing, the oil horizons will be plugged and abandoned, while the gas zones will be suspended pending platform construction. A third well (#B-1) will be located approximately 1.7 kilometers (km; 1 mile [mi]) southeast of the other wells. This well will be drilled into oil formations to collect geological information. After testing, the oil horizon will be plugged and abandoned, while the gas zones will be suspended pending platform construction. All four wells (one existing and up to three new) would be located within Lease 384403. Specific locations (latitude and longitude and depth) of each well is provided in Table 1-1 and depicted in Figure 1-1 of BlueCrest's application.

The following specific aspects of the proposed activities are likely to result in the take of marine mammals: (1) Impact hammering of the drive pipe at the well prior to drilling, and (2) vertical seismic profiling (VSP). Underwater noise associated with drilling and rig operation associated with the specified activity has been determined to have little effect on marine mammals (based on Marine Acoustics, Inc.'s [2011] acoustical testing of the *Spartan 151* while drilling). Take, by Level B harassment only, of nine marine mammal species is anticipated to result from the specified activity.

## Description of the Specified Activity

### Overview

BlueCrest proposes to conduct oil and gas production drilling operations at up to three sites in lower Cook Inlet during the 2016 open water (ice-free) season (August 1 through October 31), using the *Spartan 151* jack-up drill rig, depending on availability. The activities of relevance to this IHA request include: Impact hammering of the drive pipe and VSP seismic operations. BlueCrest proposes to mobilize and demobilize the drill rig to and from the well locations, and will utilize both helicopters and vessels to conduct resupply, crew change, and other logistics during the drilling program. These mobilization/demobilization activities, and actual drilling/operation of the rig, are also part of the proposed activity but are not considered activities of relevance to this IHA because take is not being authorized for those activities. More information regarding these activities and why they are/are not considered activities of relevance to this IHA can be found in the Detailed Description of Activities section below.

### Dates and Duration

The 2016 drilling program (which is the subject of this IHA request) would occur during the 2016 open water season (August 1 through October 31). BlueCrest estimates that the drilling period could take up to 91 days in the above time period. The exact start date is currently unknown, and dependent on the scheduling availability of the proposed drill rig. It is expected that each well will take approximately 30 days to complete, including well testing time.

During this time period, drive pipe hammering would only occur for a period of 1 to 3 days at each well site (although actual sound generation would occur only intermittently during this time period), and VSP seismic operations would only occur for a period of less than 1 to 2 days at each well site. This IHA (if issued) would be effective for 1 year, beginning on August 1, 2016.

### Specified Geographic Region

BlueCrest's proposed program would occur at Cosmopolitan State #B-1 (originally Cosmopolitan #2), Cosmopolitan State #A-1 (originally Cosmopolitan State #1), #A-2, and #A-3 in lower Cook Inlet, AK. The exact location of BlueCrest's well sites can be seen in Figure 1-1 in BlueCrest's IHA application and location information (latitude/longitude and water depth) is

provided in Table 1-1 in the IHA application.

## Detailed Description of Activities

### 1. Drill Rig Mobilization and Towing

BlueCrest proposes to conduct its production and exploratory drilling using the *Spartan 151* drill rig or similar rig (see Figure 1-2 of the IHA application). The *Spartan 151* is a 150 H class independent leg, cantilevered jack-up drill rig, with a drilling capability of 25,000 ft but can operate in maximum water depths up to only 150 ft. The rig will be towed by ocean-going tugs licensed to operate in Cook Inlet. While under tow, the rig operations will be monitored by BlueCrest and the drilling contractor management, both aboard the rig and onshore.

The *Spartan 151* is currently moored at the Seward Marine Industrial Center, directly across Resurrection Bay from the City of Seward. The intention is to move the drill rig to the Cosmopolitan Site #B-1 well site in July, a distance of approximately 314 km (195 miles [mi]). It is anticipated that this tow would be accomplished within three days. Any move post-project will be controlled by the owner of the drilling rig. The rig will be towed between locations by ocean-going tugs that are licensed to operate in Cook Inlet. Move plans will receive close scrutiny from the rig owner's tow master as well as the owner's insurers, and will be conducted in accordance with state and federal regulations. Rig moves will be conducted in a manner to minimize any potential risk regarding safety as well as cultural or environmental impact.

The rig will be wet-towed by two or three ocean-going tugs licensed to operate in Cook Inlet. Ship strike of marine mammals during tow is not an issue of major concern. Most strikes of marine mammals occur when vessels are traveling at speeds between 24 and 44 km/hr (13 and 24 knots [kt]) ([http://www.nmfs.noaa.gov/pr/pdfs/shipstrike/ss\\_speed.pdf](http://www.nmfs.noaa.gov/pr/pdfs/shipstrike/ss_speed.pdf)), well above the 1.9- to 7.4-km/hr (1- to 4-kt) drill rig tow speed expected. However, noise from towing was considered as a potential impact. Tugs generate their loudest sounds while towing due to propeller cavitation. While these continuous sounds have been measured at up to 171 dB re 1  $\mu$ Pa-m (rms) at 1-meter source (broadband), they are generally emitted at dominant frequencies of less than 5 kHz (Miles *et al.*, 1987; Richardson *et al.*, 1995a, Simmonds *et al.*, 2004). For the most part, the dominant noise frequencies from propeller cavitation are significantly lower than the dominant hearing frequencies for

pinnipeds and toothed whales, including beluga whales (Wartzok and Ketten, 1999), so towing activities are not considered an activity that would 'take' marine mammals.

### 2. Drive Pipe Hammering

A drive pipe is a relatively short, large-diameter pipe driven into the sediment prior to the drilling of oil wells. This section of tubing serves to support the initial sedimentary part of the well, preventing the looser surface layer from collapsing and obstructing the wellbore. Drive pipes are usually installed using pile driving techniques. The term 'drive pipe' is often synonymous to the term 'conductor pipe'; however, a 50.8-centimeter (cm; 20-inch [in]) conductor pipe will be drilled (not hammered) inside the drive pipe, and will be used to transport (conduct) drillhead cuttings to the surface. Therefore, there is no noise concern associated with the conductor pipe drilling, and the potential for acoustical harassment of marine mammals is due to the hammering of the drive pipe. BlueCrest proposes to drive approximately 200 ft (60 m) below mudline of 30-inch drive pipe at each of the well sites prior to drilling using a Delmar D62-22 impact hammer. This hammer has impact weight of 13,640 pounds (6,200 kg) and reaches maximum impact energy of 165,215 foot-pounds (224 kilonewton-meters) at a drop height of 12 ft (3.6 m).

Blackwell (2005) measured the noise produced by a Delmar D62-22 driving 36-inch steel pipe in upper Cook Inlet and found sound pressure levels (SPLs) to exceed 190 dB re 1  $\mu$ Pa-m (rms) at about 200 ft (60 m), 180 dB re 1  $\mu$ Pa-m (rms) at about 820 ft (250 m), and 160 dB re 1  $\mu$ Pa-m (rms) at just less than 1.2 mi (1.9 km). Illingworth and Rodkin (2014) measured the hammer noise operating from another rig, the *Endeavour*, in 2013 and found SPLs to exceed 190 dB re 1  $\mu$ Pa-m (rms) at about 180 ft (55 m), 180 dB re 1  $\mu$ Pa-m (rms) at about 560 ft (170 m), and 160 dB re 1  $\mu$ Pa-m (rms) at 1 mi (1.6 km). The drive pipe driving event is expected to last 1 to 3 days at each well site, although actual sound generation (pounding) would occur only intermittently during this period.

### 3. Drilling and Standard Operation

The *Spartan 151* was hydro-acoustically measured by Marine Acoustics, Inc. while operating in 2011. The survey results showed that continuous noise levels exceeding 120 dB re 1  $\mu$ Pa (NMFS' current threshold for estimating Level B harassment from continuous underwater noise) extended

out only 164 ft (50 m), and that this sound was largely associated with the diesel engines used as hotel power generators.

Deep well pumps were not identified as a sound source by Marine Acoustics, Inc. (2011) during their acoustical testing of the *Spartan 151*, and are not considered an activity that would 'take' marine mammals.

#### 4. Vertical Seismic Profiling

Once a well is drilled, accurate follow-up seismic data can be collected by placing a receiver at known depths in the borehole and shooting a seismic airgun at the surface near the borehole. These gathered data not only provide high resolution images of the geological layers penetrated by the borehole but can be used to accurately correlate (or correct) the original surface seismic data. The procedure is known as vertical seismic profiling (VSP).

BlueCrest intends to conduct VSP operations at the end of drilling each well using an array of airguns with total volumes of between 600 and 880 cubic inches (in<sup>3</sup>). The VSP operation is expected to last less than 1 or 2 days at each well site. Assuming a 1-meter source level of 227 dB re 1 $\mu$ Pa (based on manufacturer's specifications) for an 880 in<sup>3</sup> array and using Collins *et al.*'s (2007) transmission loss model for Cook Inlet ( $227 - 18.4 \text{ Log}(R) - 0.00188$ ), the 190 dB radius from the source was estimated at 330 ft (100 m), the 180 dB radius at 1,090 ft (332 m), and the 160 dB radius at 1.53 mi (2.46 km). 190 dB and 180 dB are the current NMFS thresholds for estimating Level A harassment from underwater noise exposure for pinnipeds and cetaceans, respectively, and 160 dB is the current NMFS threshold for estimating Level B harassment from exposure to underwater impulse noises. Therefore, VSP operations are considered an activity that has the potential to 'take' marine mammals.

Illingworth and Rodkin (2014) measured the underwater sound levels associated with a July 2013 VSP operation using a 750 in<sup>3</sup> array and found sound levels exceeding 160 dB re 1  $\mu$ Pa (rms) extended out 1.54 mi (2.47 km), virtually identical to the modeled distance. The measured radius to 190 dB was 394 ft (120 m) and to 180 dB was 787 ft (240 m).

#### 5. Helicopter and Supply Vessel Support

Helicopter logistics for project operations will include transportation for personnel, groceries, and supplies. Helicopter support will consist of a twin turbine Bell 212 (or equivalent)

helicopter certified for instrument flight rules land and over water operations. Helicopter crews and support personnel will be housed in existing Kenai area facilities. The helicopter will be based at the Kenai Airport to support rig crew changes and cargo handling. Fueling will take place at these facilities. No helicopter refueling will take place on the rig.

Helicopter flights to and from the rig are expected to average two per day. Flight routes will follow a direct route to and from the rig location, and flight heights will be maintained 1,000 to 1,500 feet above ground level to avoid take of marine mammals (Richardson *et al.*, 1995a). At these altitudes, there are not expected to be impacts from sound generation on marine mammals, and are not considered an activity that would 'take' marine mammals. The aircraft will be dedicated to the drilling operation and will be available for service 24 hours per day. A replacement aircraft will be available when major maintenance items are scheduled.

Major supplies will be staged on-shore at the Kenai OSK Dock. Required supplies and equipment will be moved from the staging area by contracted supply vessels and loaded aboard the rig when the rig is established on a drilling location. Major supplies will include fuel, drilling water, mud materials, cement, casing, and well service equipment. Supply vessels also will be outfitted with fire-fighting systems as part of fire prevention and control as required by Cook Inlet Spill Prevention and Response, Inc. The specific supply vessels have not been identified; however, typical offshore drilling support work vessels are of steel construction with strengthened hulls to give the capability of working in extreme conditions. Additional information about logistics and fuel and waste management can be found in Section 1.2 of BlueCrest's IHA application.

#### Description of Marine Mammals in the Area of the Specified Activity

Several marine mammal species occur in lower Cook Inlet. The marine mammal species under NMFS's jurisdiction include: Beluga whale (*Delphinapterus leucas*); harbor porpoise (*Phocoena phocoena*); killer whale (*Orcinus orca*); gray whale (*Eschrichtius robustus*); minke whale (*Balaenoptera acutorostrata*); Dall's porpoise (*Phocoenoides dalli*); humpback whale (*Megaptera novaeangliae*); harbor seal (*Phoca vitulina richardsi*); and Steller sea lion (*Eumetopias jubatus*).

Data collected during marine mammal monitoring at Cosmopolitan State #A-1 during summer 2013 recorded at least 154 harbor porpoise (152 within 1.2 mi (2 km) of operation, 12 of which were observed inside 853 ft (260 m) of the rig); 77 harbor seals (18 of these within 853 ft [260 m] of the active drill rig); 42 minke whales (all except for three recorded over 984 ft (300 m) from the active drill rig; 19 Dall's porpoise (none in close proximity to the active drill rig); 12 gray whales (observed offshore of Cape Starichkof; none closely approached drilling operations); seven Steller sea lions (none in close proximity to the active drill rig); 18 killer whales (17 within 1.2 mi (2 km) of operations); and one beluga whale (observed at a distance well beyond 1.8 mi (3 km) between May and August 2013 (112 days of monitoring). Based on their seasonal patterns, gray whales could be encountered in low numbers during operations. Minke whales have been considered migratory in Alaska (Allen and Angliss, 2014) but have recently been observed off Cape Starichkof and Anchor Point, including in winter. The remaining species could be encountered year-round. Humpback whales are common in the very southern part of Cook Inlet and typically do not venture north of Kachemak Bay (B. Mahoney, NMFS, pers. comm., August 2014), which is south of the proposed Cosmopolitan drilling site. Therefore, while it is unlikely that humpback whales, gray whales, or minke whales would be encountered during the proposed project, it is still a possibility based on observations from past monitoring efforts, and therefore take of these species was requested.

Of these marine mammal species, Cook Inlet beluga whales, humpback whales, and the western distinct population segment (DPS) of Steller sea lions are listed as endangered under the Endangered Species Act (ESA). The eastern DPS of Steller sea lions was recently removed from the endangered species list (78 FR 66139, November 4, 2013) but currently retains its status as "depleted" under the MMPA along with the western DPS, Cook Inlet beluga whales, and humpback whales.

Despite these designations, Cook Inlet beluga whales and the western DPS of Steller sea lions have not made significant progress towards recovery. Data indicate that the Cook Inlet population of beluga whales decreased at a rate of 0.6 percent annually between 2002 and 2012 (Allen and Angliss, 2014). The NMFS 2014 Stock Assessment Report (SAR) estimated 312 Cook Inlet beluga whales, which is a three-year average. However, the most

recent abundance estimate is 340 beluga whales (Shelden *et al.*, 2015).

Regional variation in trends in Western DPS Steller sea lion pup counts in 2000–2012 is similar to that of non-pup counts (Johnson and Fritz, 2014). Overall, there is strong evidence that pup counts in the western stock in Alaska increased (1.45 percent annually). Between 2004 and 2008, Alaska western non-pup counts increased only 3%: Eastern Gulf of Alaska (Prince William Sound area) counts were higher and Kenai Peninsula through Kiska Island counts were stable, but western Aleutian counts continued to decline. Johnson and Fritz (2014) analyzed western Steller sea lion population trends in Alaska and noted that there was strong evidence that non-pup counts in the western stock in Alaska increased between 2000 and 2012 (average rate of 1.67 percent annually). However, there continues to be considerable regional variability in recent trends across the range in Alaska, with strong evidence of a positive trend east of Samalga Pass and strong evidence of a decreasing trend to the west (Allen and Angliss, 2014).

The Central North Pacific humpback whale stock, consisting of winter/spring

populations of the Hawaiian Islands which migrate primarily to northern British Columbia/Southeast Alaska, the Gulf of Alaska, and the Bering Sea/Aleutian Islands (Baker *et al.*, 1990; Perry *et al.*, 1990; Calambokidis *et al.*, 1997), has increased over the past two decades. Different studies and sampling techniques in Hawaii and Alaska have indicated growth rates ranging from 4.9–10 percent per year in the 1980s, 1990s, and early 2000s (Mobley *et al.*, 2001; Mizroch *et al.*, 2004; Zerbini *et al.*, 2006; Calambokidis *et al.*, 2008). It is also clear that the abundance has increased in Southeast Alaska, though a trend for the Southeast Alaska portion of this stock cannot be estimated from the data because of differences in methods and areas covered (Allen and Angliss, 2013). On April 21, 2015, NMFS published a notice in the **Federal Register** requesting comments on a proposal to revise the listing status of humpback whales by delineating the species into 14 DPS, changing the Central North Pacific stock of humpback whales to become the Hawaii DPS. NMFS also proposed to delist the Hawaii DPS (80 FR 22304).

Pursuant to the ESA, critical habitat has been designated for Cook Inlet

beluga whales and Steller sea lions. The proposed drilling program does not fall within critical habitat designated in Cook Inlet for beluga whales or within critical habitat designated for Steller sea lions. The Cosmopolitan State unit is nearly 100 miles south of beluga whale Critical Habitat Area 1 and approximately 27 miles south of Critical Habitat Area 2. It is also located about 25 miles north of the isolated patch of Critical Habitat Area 2 found in Kachemak Bay. Area 2 is based on dispersed fall and winter feeding and transit areas in waters where whales typically appear in smaller densities or deeper waters (76 FR 20180, April 11, 2011). No critical habitat has been designated for humpback whales.

BlueCrest is requesting take of belugas, humpback whales and Steller sea lions, which have been observed in close proximity to the Cosmopolitan site (G. Green, Owl Ridge, personal communication). In addition, BlueCrest is requesting take of gray, minke, and killer whales, harbor and Dall’s porpoise, and harbor seals. See Table 1 below for more information on the habitat, range, population, and status of these species.

TABLE 1—THE HABITAT, ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS

Species	Habitat	Range	Best Population Estimate (Minimum) <sup>1</sup>	ESA <sup>2</sup>	MMPA <sup>3</sup>
Humpback whale ( <i>Megaptera novaeangliae</i> ).	Coastal and inland waters	Worldwide in all ocean basins.	10,103—Central N. Pacific Stock.	EN	D, S.
Minke Whale ( <i>Balaenoptera acutorostrata</i> ).	Coastal and inland waters	Bering and Chukchi Seas south to near the Equator.	1,233 <sup>2</sup> —Alaska stock .....	NL	NC.
Gray Whale ( <i>Eschrichtius robustus</i> ).	Coastal and inland waters	North Pacific from Alaska to Mexico.	20,990 <sup>3</sup> —E. North Pacific Stock.	NL	NC.
Beluga Whale ( <i>Delphinapterus leucas</i> ).	Offshore waters in winter; coastal/estuarine waters in spring.	Ice-covered arctic and subarctic waters of the Northern Hemisphere.	340—Cook Inlet stock .....	EN	D, S.
Killer Whale ( <i>Orcinus orca</i> )	Offshore to inland waterways.	Throughout North Pacific; along west coast of North America; entire Alaskan coast.	2,347—Alaska resident stock/587 Alaska transient stock.	NL	NC.
Harbor Porpoise ( <i>Phocoena phocoena</i> ).	Coastal .....	Point Barrow, Alaska to Point Conception, California.	31,046—Gulf of Alaska stock.	NL	S.
Dall’s Porpoise ( <i>Phocoenoides dalli</i> ).	Over continental shelf adjacent to slope and over deep oceanic waters.	Throughout North Pacific ...	83,400—Alaska stock .....	NL	NC.
Pacific harbor seal ( <i>Phoca vitulina richardii</i> ).	Coastal and Estuarine .....	Coastal temperate to polar regions in Northern Hemisphere.	22,900—Cook Inlet/ Shelikof stock.	NL	NC.
Steller Sea Lion ( <i>Eumetopias jubatus</i> ).	Coastal .....	Northern Pacific Rim from northern Japan to California.	55,422—W. U.S. stock .....	NL	D, S.

NA = Not available or not assessed.

<sup>1</sup> Allen and Angliss (2015).

<sup>2</sup> Zerbini *et al.* (2006).

<sup>3</sup> Caretta *et al.* (2015).

<sup>4</sup> U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, and NL = Not listed.

<sup>5</sup> U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, and NC = Not classified.



*Cetaceans*Beluga Whale (*Delphinapterus leucas*)

The Cook Inlet beluga whale DPS is a small geographically isolated population that is separated from other beluga populations by the Alaska Peninsula. The population is genetically (mtDNA) distinct from other Alaska populations suggesting the Peninsula is an effective barrier to genetic exchange (O'Corry-Crowe *et al.* 1997) and that these whales may have been separated from other stocks at least since the last ice age. Laidre *et al.* (2000) examined data from more than 20 marine mammal surveys conducted in the northern Gulf of Alaska and found that sightings of belugas outside Cook Inlet were exceedingly rare, and these were

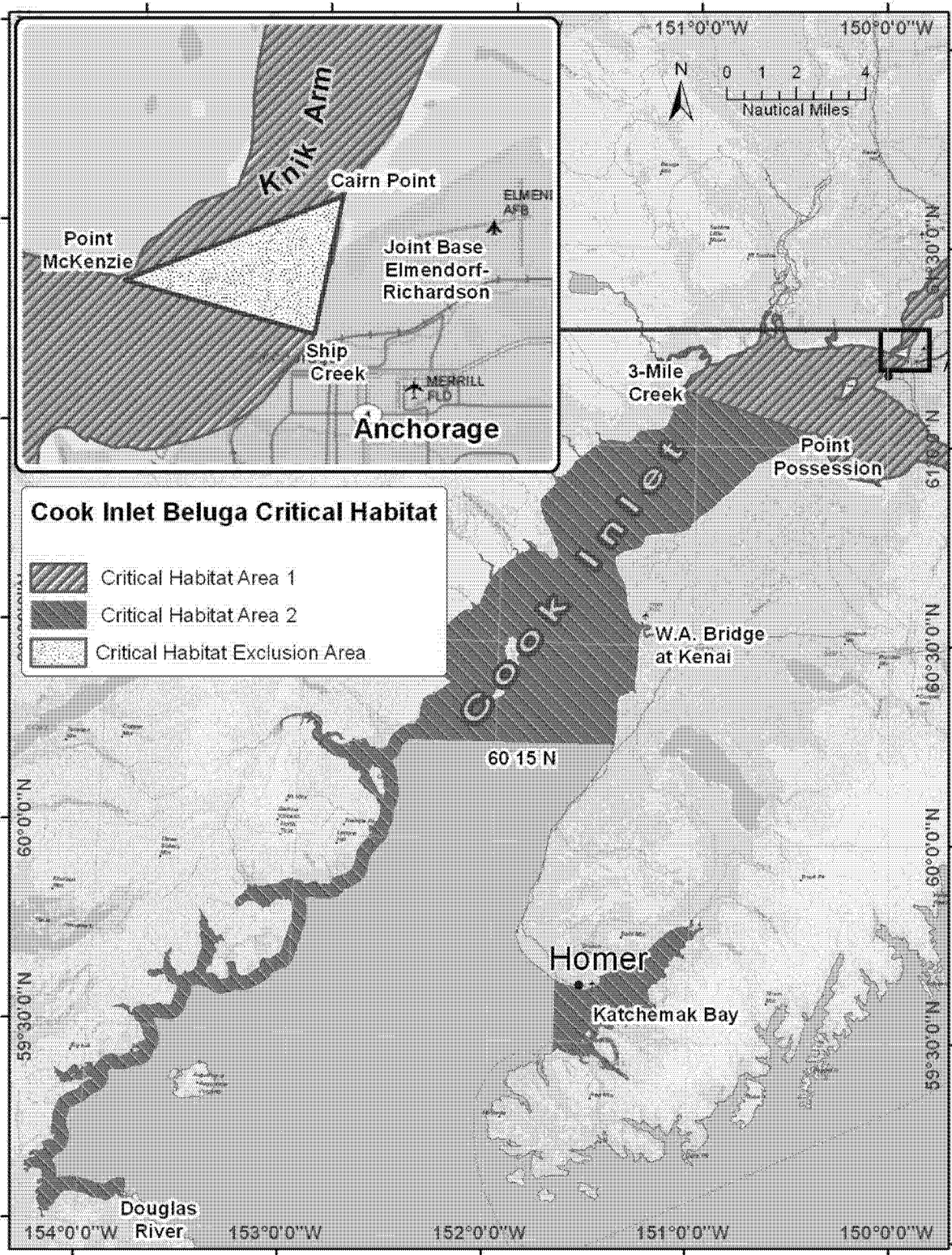
composed of a few stragglers from the Cook Inlet DPS observed at Kodiak Island, Prince William Sound, and Yakutat Bay. Several marine mammal surveys specific to Cook Inlet (Laidre *et al.* 2000, Speckman and Piatt 2000), including those that concentrated on beluga whales (Rugh *et al.* 2000, 2005a), clearly indicate that this stock largely confines itself to Cook Inlet. There is no indication that these whales make forays into the Bering Sea where they might intermix with other Alaskan stocks.

The Cook Inlet beluga DPS was originally estimated at 1,300 whales in 1979 (Calkins 1989) and has been the focus of management concerns since experiencing a dramatic decline in the 1990s. Between 1994 and 1998 the stock

declined 47 percent which was attributed to overharvesting by subsistence hunting. Subsistence hunting was estimated to annually remove 10 to 15 percent of the population during this period. Only five belugas have been harvested since 1999, yet the population has continued to decline, with the most recent estimate at only 312 animals (Allen and Angliss 2014). NMFS listed the population as "depleted" in 2000 as a consequence of the decline, and as "endangered" under the Endangered Species Act (ESA) in 2008 when the population failed to recover following a moratorium on subsistence harvest. In April 2011, NMFS designated critical habitat for the beluga under the ESA (Figure 1).

**BILLING CODE 3510-22-P**

Figure 1. Cook Inlet Beluga Critical Habitat.



**BILLING CODE 3510-22-C**

Prior to the decline, this DPS was believed to range throughout Cook Inlet and occasionally into Prince William Sound and Yakutat (Nemeth *et al.* 2007). However the range has contracted

coincident with the population reduction (Speckman and Piatt 2000). During the summer and fall beluga whales are concentrated near the Susitna River mouth, Knik Arm,

Turnagain Arm, and Chickaloon Bay (Nemeth *et al.* 2007) where they feed on migrating eulachon (*Thaleichthys pacificus*) and salmon (*Onchorhynchus spp.*) (Moore *et al.* 2000). Critical Habitat Area

1 reflects this summer distribution (Figure 1). During the winter, beluga whales concentrate in deeper waters in the mid-inlet to Kalgin Island, and in the shallow waters along the west shore of Cook Inlet to Kamishak Bay (Critical Habitat Area 2; Figure 1). Some whales may also winter in and near Kachemak Bay.

The Cosmopolitan State lease does not fall within beluga whale critical habitat. Based on Goetz et al. (2012) beluga whale densities, both along the route from Port Graham and at the well site, are very low (<0.01 whales/km<sup>2</sup>). In the past, beluga whales have been observed in Kachemak Bay, which presumably could have travelled between the bay and upper Cook Inlet following a route past the current location of the Cosmopolitan State lease. Reported observations since 1975 show most whale activity in Kachemak Bay occurred prior to 2000. However, in 2013 a single beluga was sighted a few kilometers from Cosmopolitan State well site #A-1 (Owl Ridge 2014).

#### Killer Whales (*Orcinus orca*)

Two different killer whale stocks inhabit the Cook Inlet region of Alaska: the Alaska resident stock (resident stock) and the Gulf of Alaska, Aleutian Islands, Bering Sea transient stock (transient stock) (Allen and Angliss, 2014). The Alaska resident stock occurs from Southeast Alaska to the Bering Sea (Allen and Angliss, 2014) and feeds exclusively on fish, while transient killer whales feed primarily on marine mammals (Saulitis et al., 2000). Killer whales are occasionally observed in lower Cook Inlet, especially near Homer and Port Graham (Shelden et al., 2003; Rugh et al., 2005). A concentration of sightings near Homer and inside Kachemak Bay may represent high killer whale use or high observer-effort given most records are from a whale-watching venture based in Homer. During aerial surveys conducted between 1993 and 2004, killer whales were only observed on three flights, all in the Kachemak Bay and English Bay area (Rugh et al., 2005). Eighteen killer whales (it is unknown which stock these belonged to) were recorded during the May to August 2013 marine mammal monitoring activities at Cosmopolitan State #A-1 (Owl Ridge 2014). Based on these sightings, it is possible that killer whales will occur in the vicinity of the proposed drilling activity.

#### Harbor Porpoise (*Phocoena phocoena*)

The most recent estimated density for harbor porpoises in Cook Inlet is 7.2 per 1,000 km<sup>2</sup> (Dahlheim et al., 2000) indicating that only a small number use

Cook Inlet. Harbor porpoise have been reported in lower Cook Inlet from Cape Douglas to the West Foreland, Kachemak Bay, and offshore (Rugh et al., 2005). Harbor porpoises are found primarily in coastal waters less than 328 ft deep (Hobbs and Waite, 2010) where they feed primarily on Pacific herring, other schooling fish, and cephalopods. The diet of harbor porpoise within Cook Inlet is unknown, although seasonal distribution patterns of porpoise (Shelden et al. 2014) coincident with eulachon, longfin smelt, capelin, herring, and salmon concentrations (Moulton 1997) suggest these fish are important prey items for Cook Inlet harbor porpoise. Small numbers of harbor porpoises have been consistently reported in upper Cook Inlet between April and October, except for a recent survey that recorded higher than usual numbers (Prevel Ramos et al., 2008). In addition, recent passive acoustic research in Cook Inlet by the Alaska Department of Fish and Game and the National Marine Mammal Laboratory (NMML) have indicated that harbor porpoises occur more frequently than previously thought, particularly in the West Foreland area in the spring (NMML, 2011); however overall numbers are still unknown at this time. Also, harbor porpoises were the most frequently sighted marine mammal species during monitoring in 2013 at the Cosmopolitan State #A-1 well. At least 154 harbor porpoises were recorded during the 2013 monitoring, but only 12 were observed inside 853 ft (260 m) of the drill rig.

#### Humpback whale (*Megaptera novaeangliae*)

Although there is considerable distributional overlap in the humpback whale stocks that use Alaska, the whales seasonally found in lower Cook Inlet are probably of the Central North Pacific stock. Listed as endangered under the Endangered Species Act (ESA), this stock has recently been estimated at 7,469, with the portion of the stock that feeds in the Gulf of Alaska estimated at 2,845 animals (Allen and Angliss 2014). The Central North Pacific stock winters in Hawaii and summers from British Columbia to the Aleutian Islands (Calambokidis et al. 1997), including Cook Inlet.

In the North Pacific, humpback whales feed primarily on krill (especially euphausiids) and small schooling fish such including herring, sand lance, capelin, and eulachon (Clapham 2002). Based on both fecal samples and isotope analysis, Witteveen et al. (2011) found humpback whales near Kodiak Island to feed largely on

euphausiids, capelin, Pacific sand lance, and juvenile walleye pollock. It is unknown what humpback whales seasonally occurring in Kachemak Bay and near Anchor Point are feeding on, but Cook Inlet seabird and forage fish studies (Piatt and Roseneau 1997) found large concentrations of sand lance in this region. Humpback use of Cook Inlet is largely confined to lower Cook Inlet. They have been regularly seen near Kachemak Bay during the summer months (Rugh et al. 2005a), and there is a whale-watching venture in Homer capitalizing on this seasonal event. There are anecdotal observations of humpback whales as far north as Anchor Point, with very few records to the latitude of the Cosmopolitan State lease area. However, 29 sightings of 48 humpback whales were recorded by marine mammal observers during the 2013 monitoring program at Cosmopolitan State well site #A-1 (Owl Ridge 2014), although nearly all of these animals were observed at a distance well south of the well site, many records were repeat sightings of the same animals, and none were recorded inside an active harassment zone. Due to these sightings, humpback whales may be encountered in the vicinity of the project and were included in the application for incidental take.

#### Gray Whale (*Eschrichtius robustus*)

The gray whale is a large baleen whale known to have one of the longest migrations of any mammal. This whale can be found all along the shallow coastal waters of the North Pacific Ocean. The Eastern North Pacific stock, which includes those whales that travel along the coast of Alaska, was delisted from the ESA in 1994 after a distinction was made between the western and eastern populations (59 FR 31094, June 16, 1994). The most recent estimate of abundance for the Eastern North Pacific stock of gray whales is 19,126, based on the 2006/2007 southbound survey (Laake et al., 2009).

Gray whales typically do not feed during their northward migration through Alaskan waters until they reach the Chukchi Sea where they spend the summer feeding mostly on ampeliscid amphipods, a benthic crustacean (Rice and Wolman 1971, Highsmith and Coyle 1992, Nelson et al. 1994). However, small groups of whales may opportunistically feed along route (Nerini 1984), with some groups actually becoming "resident" at areas of high localized prey densities (Calambokidis et al. 2004, Estes 2006). One "resident" group, known as the Kodiak group, has been observed year-round at Ugak Bay (Kodiak Island)

feeding on dense populations of hooded shrimp or cumaceans (Diastylidae), a benthic crustacean (Moore et al. 2007). Groups of gray whales were recorded at the Cosmopolitan State lease site in 2013 (Owl Ridge 2014), mostly in July, but it was noted that these may have been repeated sightings of the same one or two small groups, suggesting seasonal foraging use of the Anchor Point area by a few whales. There is no information the diet of gray whales using lower Cook Inlet, but available prey could be similar to that found at Ugak Bay.

Although observations of gray whales are rare within Cook Inlet, marine mammal observers noted individual gray whales on nine occasions in upper Cook Inlet in 2012 while conducting marine mammal monitoring for seismic survey activities under an IHA NMFS issued to Apache Alaska Corporation: Four times in May; twice in June; and three times in July (Apache, 2013). Annual surveys conducted by NMFS in Cook Inlet since 1993 have resulted in a total of five gray whale sightings (Rugh et al., 2005). Although Cook Inlet is not believed to comprise either essential feeding or social ground, there may be some encounters in lower Cook Inlet. Small numbers of summering gray whales have been noted by fishermen near Kachemak Bay and north of Anchor Point. Further, summer gray whales were recorded a dozen times offshore of Cape Starichkof by observers monitoring BlueCrest's Cosmopolitan #A-1 drilling program between May and August 2013. However, as noted above, these may have been repeat sightings of the same one or two small groups.

#### Minke Whale (*Balaenoptera acutorostrata*)

Minke whales are the smallest of the rorqual group of baleen whales. There are no population estimates for the North Pacific, although estimates have been made for some portions of Alaska. Zerbini et al. (2006) estimated the coastal population between Kenai Fjords and the Aleutian Islands at 1,233 animals. During Cook Inlet-wide aerial surveys conducted from 1993 to 2004, minke whales were encountered only twice (1998, 1999), both times off Anchor Point 16 mi northwest of Homer. A minke whale was also reported off Cape Starichkof in 2011 (A. Holmes, pers. comm.) and 2013 (E. Fernandez and C. Hesselbach, pers. comm.), suggesting this location is regularly used by minke whales, including during the winter. There are no records north of Cape Starichkof. However, 42 minke whales were recorded at Cosmopolitan State site #A-1 between May and August 2013 in

patterns suggesting the presence of a small, yet conspicuous summer population (at least) within the Cosmopolitan State unit. All but three of the minke whales observed during the 2013 monitoring season were recorded over 984 ft (300 m) from the active drill rig.

Minke whales have a very catholic diet feeding on preferred prey most abundant at a given time and location (Leatherwood and Reeves 1983). In the southern hemisphere they feed largely on krill, while in the North Pacific they feed on schooling fish such as herring, sandlance, and walleye pollock (Reeves et al. 2002). There is no dietary information specific to Alaska although anecdotal observations of minke whales feeding on shoaling fish off Anchor Point have been reported to NMFS (Brad Smith, pers. comm.).

#### Dall's Porpoise (*Phocoenoides dalli*)

Dall's porpoise are widely distributed throughout the North Pacific Ocean including Alaska, although they are not found in upper Cook Inlet and the shallower waters of the Bering, Chukchi, and Beaufort Seas (Allen and Angliss, 2014). The Alaskan population has been estimated at 83,400 animals (Allen and Angliss, 2014), making it one of the more common cetaceans in the state. Dall's porpoise prefer the deep offshore and shelf slope waters where they feed largely on mesopelagic fish and squid, but also herring in more nearshore waters (Jefferson 2002). There is no diet information specific to Cook Inlet. Dall's porpoise have been observed in lower Cook Inlet, including Kachemak Bay and near Anchor Point (Glenn Johnson, pers. comm.), but sightings there are rare, as expected, given they prefer waters exceeding 180 meters deep. During 112 days of monitoring during the Cosmopolitan State #1 drilling operation between May and August 2013, 19 Dall's porpoise were recorded (all during the month of August), but none were observed in close proximity of the drill rig (i.e., they were greater than 853 ft [260 m away]).

#### *Pinnipeds*

##### Harbor Seals (*Phoca vitulina*)

Harbor seals inhabit the coastal and estuarine waters of Cook Inlet and are one of the more common marine mammal species in Alaskan waters. Harbor seals are non-migratory; their movements are associated with tides, weather, season, food availability, and reproduction. The major haulout sites for harbor seals are located in lower Cook Inlet, and their presence in the upper inlet coincides with seasonal runs

of prey species. For example, harbor seals are commonly observed along the Susitna River and other tributaries along upper Cook Inlet during the eulachon and salmon migrations (NMFS, 2003). During aerial surveys of upper Cook Inlet in 2001, 2002, and 2003, harbor seals were observed 24 to 96 km (15 to 60 mi) south-southwest of Anchorage at the Chickaloon, Little Susitna, Susitna, Ivan, McArthur, and Beluga Rivers (Rugh et al., 2005). Montgomery et al. (2007) recorded over 200 haulout sites in lower Cook Inlet alone. Montgomery et al. (2007) also found seals elsewhere in Cook Inlet to move in response to local steelhead and salmon runs. However, aerial surveys conducted in June 2013 for the proposed Susitna Dam project noted nearly 700 harbor seals in the Susitna Delta region (Alaska Energy Authority, 2013). During the marine mammal monitoring associated with the 2013 drilling activities at Cosmopolitan State, 77 harbor seals were recorded. Harbor seals may be encountered during BlueCrest's lower Cook Inlet proposed drilling program.

##### Steller Sea Lion (*Eumetopias jubatus*)

The Western Stock of the Steller sea lion is defined as all populations west of longitude 144° W. to the western end of the Aleutian Islands. The most recent estimate for this stock is 45,649 animals (Allen and Angliss 2014), considerably less than that estimated 140,000 animals in the 1950s (Merrick et al. 1987). Because of this dramatic decline, the stock was listed as threatened under ESA in 1990, and was relisted as endangered in 1997. Critical habitat was designated in 1993, and is defined as a 20-nautical-mile radius around all major rookeries and haulout sites. The 20-nautical-mile buffer was established based on telemetry data that indicated these sea lions concentrated their summer foraging effort within this distance of rookeries and haul outs.

Steller sea lions inhabit lower Cook Inlet, especially in the vicinity of Shaw Island and Elizabeth Island (Nagahut Rocks) haulout sites (Rugh et al. 2005a), but are rarely seen in upper Cook Inlet (Nemeth et al. 2007). Of the 42 Steller sea lion groups recorded during Cook Inlet aerial surveys between 1993 and 2004, none were recorded north of Anchor Point and only one in the vicinity of Kachemak Bay (Rugh et al. 2005a). Marine mammal observers associated with Buccaneer's drilling project off Cape Starichkof did observe seven Steller sea lions during the summer of 2013 (Owl Ridge 2014).

The upper reaches of Cook Inlet may not provide adequate foraging conditions for sea lions for establishing

a major haul out presence. Steller sea lions feed largely on walleye pollock (*Theragra chalcogramma*), salmon (*Onchorhynchus spp.*), and arrowtooth flounder (*Atheresthes stomias*) during the summer, and walleye pollock and Pacific cod (*Gadus macrocephalus*) during the winter (Sinclair and Zeppelin 2002), none which, except for salmon, are found in abundance in upper Cook Inlet (Nemeth *et al.* 2007). Small numbers of Steller sea lions are likely to be encountered during BlueCrest's planned operations in 2016 based on the observations of sea lions made at the lease site in 2013 (Owl Ridge 2014), but on of which was observed within 50m of the drill rig during the 2013 monitoring program.

#### Summary

BlueCrest's application contains information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS jurisdiction mentioned in this document. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2014 SAR is available on the Internet at: [http://www.nmfs.noaa.gov/pr/sars/pdf/ak2014\\_final.pdf](http://www.nmfs.noaa.gov/pr/sars/pdf/ak2014_final.pdf).

#### Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (*e.g.*, impact hammering of the drive pipe and VSP) has been observed to, or are thought to, impact marine mammals. The "Estimated Take by Incidental Harassment" section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The "Negligible Impact Analysis" section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the "Estimated Take by Incidental Harassment" section, the "Mitigation" section, and the "Anticipated Effects on Marine Mammal Habitat" section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

The likely or possible impacts of the proposed drilling program in lower Cook Inlet on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence

of the equipment and personnel. Petroleum development and associated activities introduce sound into the marine environment. Impacts to marine mammals are expected to primarily be acoustic in nature. Potential acoustic effects on marine mammals relate to impact hammering of drive pipe and the VSP airgun array.

#### Acoustic Impacts

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data, Southall *et al.* (2007) designate "functional hearing groups" for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 25 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz;
- Phocid pinnipeds in Water: functional hearing is estimated to occur between approximately 75 Hz and 100 kHz; and
- Otariid pinnipeds in Water: functional hearing is estimated to occur between approximately 100 Hz and 48 kHz.

As mentioned previously in this document, nine marine mammal species (seven cetacean and two pinniped species) may occur in the drilling area of BlueCrest's lower Cook Inlet project. Of the seven cetacean species likely to occur in the proposed project area and for which take is requested, three are classified as low-frequency cetaceans (*i.e.*, humpback, minke, and gray

whales), two are classified as a mid-frequency cetacean (*i.e.*, beluga and killer whales), and two are classified as high-frequency cetaceans (*i.e.*, harbor and Dall's porpoises) (Southall *et al.*, 2007). A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

#### 1. Tolerance

Numerous studies have shown that underwater sounds from industry activities are often readily detectable by marine mammals in the water at distances of many kilometers. Numerous studies have also shown that marine mammals at distances more than a few kilometers away often show no apparent response to industry activities of various types (Miller *et al.*, 2005; Bain and Williams, 2006). This is often true even in cases when the sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to underwater sound such as airgun pulses or vessels under some conditions, at other times mammals of all three types have shown no overt reactions (*e.g.*, Malme *et al.*, 1986; Richardson *et al.*, 1995a; Madsen and Mohl, 2000; Croll *et al.*, 2001; Jacobs and Terhune, 2002; Madsen *et al.*, 2002; Miller *et al.*, 2005). Weir (2008) observed marine mammal responses to seismic pulses from a 24 airgun array firing a total volume of either 5,085 in<sup>3</sup> or 3,147 in<sup>3</sup> in Angolan waters between August 2004 and May 2005. Weir recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings/hr) for humpback and sperm whales according to the airgun array's operational status (*i.e.*, active versus silent). The airgun arrays used in the Weir (2008) study were much larger than the array proposed for use during the limited VSP (total discharge volumes of 600 to 880 in<sup>3</sup> for 1 to 2 days). In general, pinnipeds and small odontocetes seem to be more tolerant of exposure to some types of underwater sound than are baleen whales. Richardson *et al.* (1995a) found that vessel noise does not seem to strongly affect pinnipeds that are already in the water. Richardson *et al.* (1995a) went on to explain that seals on haul-outs sometimes respond strongly to the presence of vessels and at other times appear to show considerable tolerance of vessels.

## 2. Masking

Masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, avoiding predators, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000).

Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency as, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations in situations where the temporal and spatial scope of the masking activities is extensive.

Masking occurs when anthropogenic sounds and signals (that the animal utilizes) overlap at both spectral and temporal scales. The sounds generated by the proposed equipment for the drilling program will consist of low frequency sources (most under 500 Hz). Lower frequency man-made sounds are more likely to affect detection of communication calls of low-frequency specialists and other potentially important natural sounds such as surf and prey noise. There is less concern regarding masking of conspecific vocalizations near the jack-up rig during drilling operations, as the species most likely to be found in the vicinity are mid- to high-frequency cetaceans or pinnipeds and not low-frequency cetaceans. Additionally, masking is not expected to be a concern from airgun usage due to the brief duration of use (less than a day to up to 2 days) and the low-frequency sounds that are produced by the airguns. However, at long distances (over tens of kilometers away), due to multipath propagation and reverberation, the durations of airgun pulses can be “stretched” to seconds with long decays (Madsen *et al.*, 2006), although the intensity of the sound is greatly reduced.

The “stretching” of sound described above could affect communication signals used by low frequency mysticetes when they occur near the noise band and thus reduce the communication space of animals (*e.g.*, Clark *et al.*, 2009) and cause increased stress levels (*e.g.*, Foote *et al.*, 2004; Holt

*et al.*, 2009); however, only low numbers of baleen whales are expected to occur within the proposed action area. Marine mammals are thought to sometimes be able to compensate for masking by adjusting their acoustic behavior by shifting call frequencies, and/or increasing call volume and vocalization rates. For example, blue whales are found to increase call rates when exposed to seismic survey noise in the St. Lawrence Estuary (Di Iorio and Clark, 2010). The North Atlantic right whales (*Eubalaena glacialis*) exposed to high shipping noise increase call frequency (Parks *et al.*, 2007), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller *et al.*, 2000). Additionally, beluga whales have been known to change their vocalizations in the presence of high background noise possibly to avoid masking calls (Au *et al.*, 1985; Lesage *et al.*, 1999; Scheifele *et al.*, 2005). Although some degree of masking is inevitable when high levels of manmade broadband sounds are introduced into the sea, marine mammals have evolved systems and behavior that function to reduce the impacts of masking. Structured signals, such as the echolocation click sequences of small toothed whales, may be readily detected even in the presence of strong background noise because their frequency content and temporal features usually differ strongly from those of the background noise (Au and Moore, 1988, 1990). The components of background noise that are similar in frequency to the sound signal in question primarily determine the degree of masking of that signal.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The sound localization abilities of marine mammals suggest that, if signal and noise come from different directions, masking would not be as severe as the usual types of masking studies might suggest (Richardson *et al.*, 1995a). The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio. In the cases of higher frequency hearing by the bottlenose dolphin, beluga whale, and

killer whale, empirical evidence confirms that masking depends strongly on the relative directions of arrival of sound signals and the masking noise (Penner *et al.*, 1986; Dubrovskiy, 1990; Bain *et al.*, 1993; Bain and Dahlheim, 1994). Toothed whales, and probably other marine mammals as well, have additional capabilities besides directional hearing that can facilitate detection of sounds in the presence of background noise. There is evidence that some toothed whales can shift the dominant frequencies of their echolocation signals from a frequency range with a lot of ambient noise toward frequencies with less noise (Au *et al.*, 1974, 1985; Moore and Pawloski, 1990; Thomas and Turl, 1990; Romanenko and Kitain, 1992; Lesage *et al.*, 1999). A few marine mammal species are known to increase the source levels or alter the frequency of their calls in the presence of elevated sound levels (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1993, 1999; Terhune, 1999; Foote *et al.*, 2004; Parks *et al.*, 2007, 2009; Di Iorio and Clark, 2009; Holt *et al.*, 2009).

These data demonstrating adaptations for reduced masking pertain mainly to the very high frequency echolocation signals of toothed whales. There is less information about the existence of corresponding mechanisms at moderate or low frequencies or in other types of marine mammals. For example, Zaitseva *et al.* (1980) found that, for the bottlenose dolphin, the angular separation between a sound source and a masking noise source had little effect on the degree of masking when the sound frequency was 18 kHz, in contrast to the pronounced effect at higher frequencies. Directional hearing has been demonstrated at frequencies as low as 0.5–2 kHz in several marine mammals, including killer whales (Richardson *et al.*, 1995a). This ability may be useful in reducing masking at these frequencies. In summary, high levels of sound generated by anthropogenic activities may act to mask the detection of weaker biologically important sounds by some marine mammals. This masking may be more prominent for lower frequencies. For higher frequencies, such as that used in echolocation by toothed whales, several mechanisms are available that may allow them to reduce the effects of such masking.

## 3. Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of and response to (in both nature and magnitude) an acoustic event. An animal's prior



experience with a sound or sound source affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to respond to certain sounds in certain ways; Southall *et al.*, 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of a sound to biologically relevant sounds in the animal's environment (*i.e.*, calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.*, 2007). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (*i.e.*, proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

Exposure of marine mammals to sound sources can result in (but is not limited to) no response or any of the following observable responses: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; avoidance; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.*, 2007). The biological significance of many of these behavioral disturbances is difficult to predict.

The following sub-sections provide examples of the variability in behavioral responses that could be expected given the different sensitivities of marine mammal species to sound.

**Baleen Whales**—Richardson *et al.* (1995b) reported changes in surfacing and respiration behavior and the occurrence of turns during surfacing in bowhead whales exposed to playback of underwater sound from drilling activities. These behavioral effects were localized and occurred at distances up to 1.2–2.5 mi (2–4 km).

Richardson *et al.* (2008) reported a slight change in the distribution of bowhead whale calls in response to operational sounds on BP's Northstar Island. The southern edge of the call

distribution ranged from 0.47 to 1.46 mi (0.76 to 2.35 km) farther offshore, apparently in response to industrial sound levels. However, this result was only achieved after intensive statistical analyses, and it is not clear that this represented a biologically significant effect.

Richardson *et al.* (1995a) and Moore and Clarke (2002) reviewed a few studies that observed responses of gray whales to aircraft. Cow-calf pairs were quite sensitive to a turboprop survey flown at 1,000 ft (305 m) altitude on the Alaskan summering grounds. In that survey, adults were seen swimming over the calf, or the calf swam under the adult (Ljungblad *et al.*, 1983, cited in Richardson *et al.*, 1995a and Moore and Clarke, 2002). However, when the same aircraft circled for more than 10 minutes at 1,050 ft (320 m) altitude over a group of mating gray whales, no reactions were observed (Ljungblad *et al.*, 1987, cited in Moore and Clarke, 2002). Malme *et al.* (1984, cited in Richardson *et al.*, 1995a and Moore and Clarke, 2002) conducted playback experiments on migrating gray whales. They exposed the animals to underwater noise recorded from a Bell 212 helicopter (estimated altitude = 328 ft [100 m]), at an average of three simulated passes per minute. The authors observed that whales changed their swimming course and sometimes slowed down in response to the playback sound but proceeded to migrate past the transducer. Migrating gray whales did not react overtly to a Bell 212 helicopter at greater than 1,394 ft (425 m) altitude, occasionally reacted when the helicopter was at 1,000–1,198 ft (305–365 m), and usually reacted when it was below 825 ft (250 m; Southwest Research Associates, 1988, cited in Richardson *et al.*, 1995a and Moore and Clarke, 2002). Reactions noted in that study included abrupt turns or dives or both. Green *et al.* (1992, cited in Richardson *et al.*, 1995a) observed that migrating gray whales rarely exhibited noticeable reactions to a straight-line overflight by a Twin Otter at 197 ft (60 m) altitude. Overflights are likely to have little or no disturbance effects on baleen whales. Any disturbance that may occur would likely be temporary and localized.

Southall *et al.* (2007, Appendix C) reviewed a number of papers describing the responses of marine mammals to non-pulsed sound, such as that produced during drilling operations. In general, little or no response was observed in animals exposed at received levels from 90–120 dB re 1  $\mu$ Pa (rms). Probability of avoidance and other behavioral effects increased when

received levels were from 120–160 dB re 1  $\mu$ Pa (rms). Some of the relevant reviews contained in Southall *et al.* (2007) are summarized next.

Baker *et al.* (1982) reported some avoidance by humpback whales to vessel noise when received levels were 110–120 dB (rms) and clear avoidance at 120–140 dB (sound measurements were not provided by Baker but were based on measurements of identical vessels by Miles and Malme, 1983).

Malme *et al.* (1983, 1984) used playbacks of sounds from helicopter overflight and drilling rigs and platforms to study behavioral effects on migrating gray whales. Received levels exceeding 120 dB induced avoidance reactions. Malme *et al.* (1984) calculated 10%, 50%, and 90% probabilities of gray whale avoidance reactions at received levels of 110, 120, and 130 dB, respectively. Malme *et al.* (1986) observed the behavior of feeding gray whales during four experimental playbacks of drilling sounds (50 to 315 Hz; 21-min overall duration and 10% duty cycle; source levels of 156–162 dB). In two cases for received levels of 100–110 dB, no behavioral reaction was observed. However, avoidance behavior was observed in two cases where received levels were 110–120 dB.

Richardson *et al.* (1990) performed 12 playback experiments in which bowhead whales in the Alaskan Arctic were exposed to drilling sounds. Whales generally did not respond to exposures in the 100 to 130 dB range, although there was some indication of minor behavioral changes in several instances.

McCauley *et al.* (1996) reported several cases of humpback whales responding to vessels in Hervey Bay, Australia. Results indicated clear avoidance at received levels between 118 to 124 dB in three cases for which response and received levels were observed/measured.

Palka and Hammond (2001) analyzed line transect census data in which the orientation and distance off transect line were reported for large numbers of minke whales. The authors developed a method to account for effects of animal movement in response to sighting platforms. Minor changes in locomotion speed, direction, and/or diving profile were reported at ranges from 1,847 to 2,352 ft (563 to 717 m) at received levels of 110 to 120 dB.

Biassoni *et al.* (2000) and Miller *et al.* (2000) reported behavioral observations for humpback whales exposed to a low-frequency sonar stimulus (160- to 330-Hz frequency band; 42-s tonal signal repeated every 6 min; source levels 170 to 200 dB) during playback experiments. Exposure to measured received levels

ranging from 120 to 150 dB resulted in variability in humpback singing behavior. Croll *et al.* (2001) investigated responses of foraging fin and blue whales to the same low frequency active sonar stimulus off southern California. Playbacks and control intervals with no transmission were used to investigate behavior and distribution on time scales of several weeks and spatial scales of tens of kilometers. The general conclusion was that whales remained feeding within a region for which 12 to 30 percent of exposures exceeded 140 dB.

Frankel and Clark (1998) conducted playback experiments with wintering humpback whales using a single speaker producing a low-frequency “M-sequence” (sine wave with multiple-phase reversals) signal in the 60 to 90 Hz band with output of 172 dB at 1 m. For 11 playbacks, exposures were between 120 and 130 dB re 1  $\mu$ Pa (rms) and included sufficient information regarding individual responses. During eight of the trials, there were no measurable differences in tracks or bearings relative to control conditions, whereas on three occasions, whales either moved slightly away from ( $n = 1$ ) or towards ( $n = 2$ ) the playback speaker during exposure. The presence of the source vessel itself had a greater effect than did the M-sequence playback.

Finally, Nowacek *et al.* (2004) used controlled exposures to demonstrate behavioral reactions of northern right whales to various non-pulse sounds. Playback stimuli included ship noise, social sounds of conspecifics, and a complex, 18-min “alert” sound consisting of repetitions of three different artificial signals. Ten whales were tagged with calibrated instruments that measured received sound characteristics and concurrent animal movements in three dimensions. Five out of six exposed whales reacted strongly to alert signals at measured received levels between 130 and 150 dB (*i.e.*, ceased foraging and swam rapidly to the surface). Two of these individuals were not exposed to ship noise, and the other four were exposed to both stimuli. These whales reacted mildly to conspecific signals. Seven whales, including the four exposed to the alert stimulus, had no measurable response to either ship sounds or actual vessel noise.

Baleen whale responses to pulsed sound (*e.g.*, seismic airguns) have been studied more thoroughly than responses to continuous sound (*e.g.*, drill rigs). Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to

pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much greater distances (Miller *et al.*, 2005). However, baleen whales exposed to strong noise pulses often react by deviating from their normal migration route (Richardson *et al.*, 1999). Migrating gray and bowhead whales were observed avoiding the sound source by displacing their migration route to varying degrees but within the natural boundaries of the migration corridors (Schick and Urban, 2000; Richardson *et al.*, 1999; Malme *et al.*, 1983). Baleen whale responses to pulsed sound however may depend on the type of activity in which the whales are engaged. Some evidence suggests that feeding bowhead whales may be more tolerant of underwater sound than migrating bowheads (Miller *et al.*, 2005; Lyons *et al.*, 2009; Christie *et al.*, 2010).

Results of studies of gray, bowhead, and humpback whales have determined that received levels of pulses in the 160–170 dB re 1  $\mu$ Pa rms range seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed. In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 2.8–9 mi (4.5–14.5 km) from the source. For the much smaller airgun array used during the VSP survey (total discharge volume between 600 and 880 in<sup>3</sup>, the distance to a received level of 160 dB re 1  $\mu$ Pa rms is estimated to be 1.53 mi (2.47 km). Baleen whales within those sound isopleths may show avoidance or other strong disturbance reactions to the airgun array.

Malme *et al.* (1986, 1988) studied the responses of feeding eastern gray whales to pulses from a single 100 in<sup>3</sup> airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50% of feeding gray whales ceased feeding at an average received pressure level of 173 dB re 1  $\mu$ Pa on an (approximate) rms basis, and that 10% of feeding whales interrupted feeding at received levels of 163 dB. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast and on observations of the distribution of feeding Western Pacific gray whales off Sakhalin Island, Russia, during a seismic survey (Yazvenko *et al.*, 2007).

Data on short-term reactions (or lack of reactions) of cetaceans to impulsive noises do not necessarily provide information about long-term effects. While it is not certain whether impulsive noises affect reproductive

rate or distribution and habitat use in subsequent days or years, certain species have continued to use areas ensonified by airguns and have continued to increase in number despite successive years of anthropogenic activity in the area. Behavioral responses to noise exposure are generally highly variable and context dependent (Wartzok *et al.* 2004). Travelling blue and fin whales (*Balaenoptera physalus*) exposed to seismic noise from airguns have been reported to stop emitting redundant songs (McDonald *et al.* 1995; Clark & Gagnon 2006). By contrast, Iorio and Clark (2010) found increased production of transient, non-redundant calls of blue whales during seismic sparker operations. In any event, the brief exposures to sound pulses from the proposed airgun source (the airguns will only be fired for a few hours at a time over the course of 1 to 2 days) are highly unlikely to result in prolonged effects.

**Toothed Whales**—Most toothed whales have their greatest hearing sensitivity at frequencies much higher than that of baleen whales and may be less responsive to low-frequency sound commonly associated with oil and gas industry exploratory drilling activities. Richardson *et al.* (1995b) reported that beluga whales did not show any apparent reaction to playback of underwater drilling sounds at distances greater than 656–1,312 ft (200–400 m). Reactions included slowing down, milling, or reversal of course after which the whales continued past the projector, sometimes within 164–328 ft (50–100 m). The authors concluded (based on a small sample size) that the playback of drilling sounds had no biologically significant effects on migration routes of beluga whales migrating through pack ice and along the seaward side of the nearshore lead east of Point Barrow in spring.

At least six of 17 groups of beluga whales appeared to alter their migration path in response to underwater playbacks of icebreaker sound (Richardson *et al.*, 1995b). Received levels from the icebreaker playback were estimated at 78–84 dB in the  $\frac{1}{3}$ -octave band centered at 5,000 Hz, or 8–14 dB above ambient. If beluga whales reacted to an actual icebreaker at received levels of 80 dB, reactions would be expected to occur at distances on the order of 6.2 mi (10 km). Finley *et al.* (1990) also reported beluga avoidance of icebreaker activities in the Canadian High Arctic at distances of 22–31 mi (35–50 km). In addition to avoidance, changes in dive behavior and pod integrity were also noted. However,



no icebreakers will be used during this proposed program.

Patenaude *et al.* (2002) reported changes in beluga whale diving and respiration behavior, and some whales veered away when a helicopter passed at  $\leq 820$  ft (250 m) lateral distance at altitudes up to 492 ft (150 m). However, some belugas showed no reaction to the helicopter. Belugas appeared to show less response to fixed-wing aircraft than to helicopter overflights.

In reviewing responses of cetaceans with best hearing in mid-frequency ranges, which includes toothed whales, Southall *et al.* (2007) reported that combined field and laboratory data for mid-frequency cetaceans exposed to non-pulse sounds did not lead to a clear conclusion about received levels coincident with various behavioral responses. In some settings, individuals in the field showed profound (significant) behavioral responses to exposures from 90–120 dB, while others failed to exhibit such responses for exposure to received levels from 120–150 dB. Contextual variables other than exposure received level, and probable species differences, are the likely reasons for this variability. Context, including the fact that captive subjects were often directly reinforced with food for tolerating noise exposure, may also explain why there was great disparity in results from field and laboratory conditions—exposures in captive settings generally exceeded 170 dB before inducing behavioral responses. A summary of some of the relevant material reviewed by Southall *et al.* (2007) is next.

Buckstaff (2004) reported elevated bottlenose dolphin (*Tursiops truncatus*) whistle rates with received levels from oncoming vessels in the 110 to 120 dB range in Sarasota Bay, Florida. These hearing thresholds were apparently lower than those reported by a researcher listening with towed hydrophones. Morisaka *et al.* (2005) compared whistles from three populations of Indo-Pacific bottlenose dolphins (*Tursiops aduncus*). One population was exposed to vessel noise with spectrum levels of approximately 85 dB/Hz in the 1- to 22-kHz band (broadband received levels approximately 128 dB) as opposed to approximately 65 dB/Hz in the same band (broadband received levels approximately 108 dB) for the other two sites. Dolphin whistles in the noisier environment had lower fundamental frequencies and less frequency modulation, suggesting a shift in sound parameters as a result of increased ambient noise.

Morton and Symonds (2002) used census data on killer whales in British Columbia to evaluate avoidance of non-pulse acoustic harassment devices (AHDs). Avoidance ranges were about 2.5 mi (4 km). Also, there was a dramatic reduction in the number of days “resident” killer whales were sighted during AHD-active periods compared to pre- and post-exposure periods and a nearby control site.

Monteiro-Neto *et al.* (2004) studied avoidance responses of tucuxi (*Sotalia fluviatilis*), a freshwater dolphin, to Dukane® Netmark acoustic deterrent devices. In a total of 30 exposure trials, approximately five groups each demonstrated significant avoidance compared to 20 “pinger off” and 55 “no-pinger” control trials over two quadrants of about 0.19 mi<sup>2</sup> (0.5 km<sup>2</sup>). Estimated exposure received levels were approximately 115 dB.

Awbrey and Stewart (1983) played back semi-submersible drillship sounds (source level: 163 dB) to belugas in Alaska. They reported avoidance reactions at 984 and 4,921 ft (300 and 1,500 m) and approach by groups at a distance of 2.2 mi (3.5 km; received levels were approximately 110 to 145 dB over these ranges assuming a 15 log R transmission loss). Similarly, Richardson *et al.* (1990) played back drilling platform sounds (source level: 163 dB) to belugas in Alaska. They conducted aerial observations of eight individuals among approximately 100 spread over an area several hundred meters to several kilometers from the sound source and found no obvious reactions. Moderate changes in movement were noted for three groups swimming within 656 ft (200 m) of the sound projector.

Two studies deal with issues related to changes in marine mammal vocal behavior as a function of variable background noise levels. Foote *et al.* (2004) found increases in the duration of killer whale calls over the period 1977 to 2003, during which time vessel traffic in Puget Sound, and particularly whale-watching boats around the animals, increased dramatically. Scheifele *et al.* (2005) demonstrated that belugas in the St. Lawrence River increased the levels of their vocalizations as a function of the background noise level (the “Lombard Effect”).

Several researchers conducting laboratory experiments on hearing and the effects of non-pulse sounds on hearing in mid-frequency cetaceans have reported concurrent behavioral responses. Nachtigall *et al.* (2003) reported that noise exposures up to 179 dB and 55-min duration affected the

trained behaviors of a bottlenose dolphin participating in a temporary threshold shift (TTS) experiment. Finneran and Schlundt (2004) provided a detailed, comprehensive analysis of the behavioral responses of belugas and bottlenose dolphins to 1-s tones (received levels 160 to 202 dB) in the context of TTS experiments. Romano *et al.* (2004) investigated the physiological responses of a bottlenose dolphin and a beluga exposed to these tonal exposures and demonstrated a decrease in blood cortisol levels during a series of exposures between 130 and 201 dB. Collectively, the laboratory observations suggested the onset of a behavioral response at higher received levels than did field studies. The differences were likely related to the very different conditions and contextual variables between untrained, free-ranging individuals vs. laboratory subjects that were rewarded with food for tolerating noise exposure.

Seismic operators and marine mammal observers sometimes see dolphins and other small toothed whales near operating airgun arrays, but, in general, there seems to be a tendency for most delphinids to show some limited avoidance of seismic vessels operating large airgun systems. However, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing. Nonetheless, there have been indications that small toothed whales sometimes move away or maintain a somewhat greater distance from the vessel when a large array of airguns is operating than when it is silent (*e.g.*, Goold, 1996a,b,c; Calambokidis and Osmeck, 1998; Stone, 2003). The beluga may be a species that (at least at times) shows long-distance avoidance of seismic vessels. Aerial surveys during seismic operations in the southeastern Beaufort Sea recorded much lower sighting rates of beluga whales within 6.2–12.4 mi (10–20 km) of an active seismic vessel. These results were consistent with the low number of beluga sightings reported by observers aboard the seismic vessel, suggesting that some belugas might be avoiding the seismic operations at distances of 6.2–12.4 mi (10–20 km) (Miller *et al.*, 2005).

Observers stationed on seismic vessels operating off the United Kingdom from 1997–2000 have provided data on the occurrence and behavior of various toothed whales exposed to seismic pulses (Stone, 2003; Gordon *et al.*, 2004). Killer whales were found to be significantly farther from large airgun arrays during periods of shooting compared with periods of no

shooting. The displacement of the median distance from the array was approximately 0.5 km (0.3 mi) or more. Killer whales also appear to be more tolerant of seismic shooting in deeper water.

Captive bottlenose dolphins and beluga whales exhibit changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.*, 2002, 2005). However, the animals tolerated high received levels of sound (p-p level >200 dB re 1  $\mu$ Pa) before exhibiting aversive behaviors.

*Pinnipeds*—Pinnipeds generally seem to be less responsive to exposure to industrial sound than most cetaceans. Pinniped responses to underwater sound from some types of industrial activities such as seismic exploration appear to be temporary and localized (Harris *et al.*, 2001; Reiser *et al.*, 2009).

Southall *et al.* (2007) reviewed literature describing responses of pinnipeds to non-pulsed sound and reported that the limited data suggest exposures between approximately 90 and 140 dB generally do not appear to induce strong behavioral responses in pinnipeds exposed to non-pulse sounds in water; no data exist regarding exposures at higher levels. It is important to note that among these studies, there are some apparent differences in responses between field and laboratory conditions. In contrast to the mid-frequency odontocetes, captive pinnipeds responded more strongly at lower levels than did animals in the field. Again, contextual issues are the likely cause of this difference.

Jacobs and Terhune (2002) observed harbor seal reactions to Acoustic Harassment Devices (AHD) (source level in this study was 172 dB) deployed around aquaculture sites. Seals were generally unresponsive to sounds from the AHDs. During two specific events, individuals came within 141 and 144 ft (43 and 44 m) of active AHDs and failed to demonstrate any measurable behavioral response; estimated received levels based on the measures given were approximately 120 to 130 dB.

Costa *et al.* (2003) measured received noise levels from an Acoustic Thermometry of Ocean Climate (ATOC) program sound source off northern California using acoustic data loggers placed on translocated elephant seals. Subjects were captured on land, transported to sea, instrumented with archival acoustic tags, and released such that their transit would lead them near an active ATOC source (at 939-m depth; 75-Hz signal with 37.5-Hz bandwidth; 195 dB maximum source level, ramped

up from 165 dB over 20 min) on their return to a haul-out site. Received exposure levels of the ATOC source for experimental subjects averaged 128 dB (range 118 to 137) in the 60- to 90-Hz band. None of the instrumented animals terminated dives or radically altered behavior upon exposure, but some statistically significant changes in diving parameters were documented in nine individuals. Translocated northern elephant seals exposed to this particular non-pulse source began to demonstrate subtle behavioral changes at exposure to received levels of approximately 120 to 140 dB.

Kastelein *et al.* (2006) exposed nine captive harbor seals in an approximately 82  $\times$  98 ft (25  $\times$  30 m) enclosure to non-pulse sounds used in underwater data communication systems (similar to acoustic modems). Test signals were frequency modulated tones, sweeps, and bands of noise with fundamental frequencies between 8 and 16 kHz; 128 to 130 [ $\pm$ 3] dB source levels; 1- to 2-s duration [60–80 percent duty cycle]; or 100 percent duty cycle. They recorded seal positions and the mean number of individual surfacing behaviors during control periods (no exposure), before exposure, and in 15-min experimental sessions (n = 7 exposures for each sound type). Seals generally swam away from each source at received levels of approximately 107 dB, avoiding it by approximately 16 ft (5 m), although they did not haul out of the water or change surfacing behavior. Seal reactions did not appear to wane over repeated exposure (*i.e.*, there was no obvious habituation), and the colony of seals generally returned to baseline conditions following exposure. The seals were not reinforced with food for remaining in the sound field.

Potential effects to pinnipeds from aircraft activity could involve both acoustic and non-acoustic effects. It is uncertain if the seals react to the sound of the helicopter or to its physical presence flying overhead. Typical reactions of hauled out pinnipeds to aircraft that have been observed include looking up at the aircraft, moving on the ice or land, entering a breathing hole or crack in the ice, or entering the water. Ice seals hauled out on the ice have been observed diving into the water when approached by a low-flying aircraft or helicopter (Burns and Harbo, 1972, cited in Richardson *et al.*, 1995a; Burns and Frost, 1979, cited in Richardson *et al.*, 1995a). Richardson *et al.* (1995a) note that responses can vary based on differences in aircraft type, altitude, and flight pattern.

Blackwell *et al.* (2004a) observed 12 ringed seals during low-altitude

overflights of a Bell 212 helicopter at Northstar in June and July 2000 (nine observations took place concurrent with pipe-driving activities). One seal showed no reaction to the aircraft while the remaining 11 (92%) reacted, either by looking at the helicopter (n = 10) or by departing from their basking site (n = 1). Blackwell *et al.* (2004a) concluded that none of the reactions to helicopters were strong or long lasting, and that seals near Northstar in June and July 2000 probably had habituated to industrial sounds and visible activities that had occurred often during the preceding winter and spring. There have been few systematic studies of pinniped reactions to aircraft overflights, and most of the available data concern pinnipeds hauled out on land or ice rather than pinnipeds in the water (Richardson *et al.*, 1995a; Born *et al.*, 1999).

Reactions of harbor seals to the simulated sound of a 2-megawatt wind power generator were measured by Koschinski *et al.* (2003). Harbor seals surfaced significantly further away from the sound source when it was active and did not approach the sound source as closely. The device used in that study produced sounds in the frequency range of 30 to 800 Hz, with peak source levels of 128 dB at 1 m at the 80- and 160-Hz frequencies.

Pinnipeds are not likely to show a strong avoidance reaction to the airgun sources proposed for use. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds and only slight (if any) changes in behavior. Monitoring work in the Alaskan Beaufort Sea during 1996–2001 provided considerable information regarding the behavior of Arctic ice seals exposed to seismic pulses (Harris *et al.*, 2001; Moulton and Lawson, 2002). These seismic projects usually involved arrays of 6 to 16 airguns with total volumes of 560 to 1,500 in<sup>3</sup>. The combined results suggest that some seals avoid the immediate area around seismic vessels. In most survey years, ringed seal sightings tended to be farther away from the seismic vessel when the airguns were operating than when they were not (Moulton and Lawson, 2002). However, these avoidance movements were relatively small, on the order of 100 m (328 ft) to a few hundreds of meters, and many seals remained within 100–200 m (328–656 ft) of the trackline as the operating airgun array passed by. Seal sighting rates at the water surface were lower during airgun array operations than during no-airgun periods in each survey year except 1997. Similarly, seals are often very tolerant of pulsed sounds

from seal-scaring devices (Mate and Harvey, 1987; Jefferson and Curry, 1994; Richardson *et al.*, 1995a). However, initial telemetry work suggests that avoidance and other behavioral reactions by two other species of seals to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.*, 1998). Even if reactions of the species occurring in the present study area are as strong as those evident in the telemetry study, reactions are expected to be confined to relatively small distances and durations.

#### 4. Threshold Shift (Noise-Induced Loss of Hearing)

When animals exhibit reduced hearing sensitivity (*i.e.*, sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.*, there is complete recovery), can occur in specific frequency ranges (*i.e.*, an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.*, 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter *et al.*, 1966; Ward, 1997). For example, one short but loud

(higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). However, in the case of the proposed drilling program, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS, as described in detail in the paragraphs below.

PTS is considered auditory injury (Southall *et al.*, 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.*, 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.*, 2000, 2002b, 2003, 2005a, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.*, 2009; Mooney *et al.*, 2009a, 2009b; Popov *et al.*, 2011a, 2011b; Kastelein *et al.*, 2012a; Schlundt *et al.*, 2000; Nachtigall *et al.*, 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.*, 1999, 2005; Kastelein *et al.*, 2012b).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical

frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur during the proposed drilling program in Cook Inlet due to the relatively short duration of activities producing these higher level sounds in combination with mitigation and monitoring efforts to avoid such effects.

#### 5. Non-Auditory Physical Effects

Non-auditory physical effects might occur in marine mammals exposed to strong underwater sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (*i.e.*, beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.*, 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses; autonomic nervous system responses; neuroendocrine responses; or immune responses.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued

exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical "fight or flight" response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with "stress." These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.*, 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.*, 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called

"distress" (sensu Seyle, 1950) or "allostatic loading" (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiment; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005; Reneerkens *et al.*, 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to anthropogenic sound exposure, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as "distress" upon exposure to anthropogenic sounds. For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (*e.g.*, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.*, goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and communicate with conspecifics. Although empirical information on the effects of sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, we assume that reducing a marine mammal's ability

to gather information about its environment and communicate with other members of its species would induce stress, based on data that terrestrial animals exhibit those responses under similar conditions (NRC, 2003) and because marine mammals use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses. Marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), NMFS also assumes that stress responses could persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS. The source level of the jack-up rig is not loud enough to induce PTS or likely even TTS.

Resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.*, 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, very little is known about the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.*, 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. There is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns, which are not proposed for use during this program. For the most part, only low-level continuous sounds would be produced during the drilling program as impact hammering and VSP would occur for only short periods of time and most of the sound produced would be from the ongoing operation/drilling. In addition, marine mammals that show

behavioral avoidance of industry activities, including belugas and some pinnipeds, are especially unlikely to incur non-auditory impairment or other physical effects.

#### 6. Stranding and Mortality

Marine mammals close to underwater detonations of high explosive can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and their peak amplitudes have slower rise times. To date, there is no evidence that serious injury, death, or stranding by marine mammals can occur from exposure to airgun pulses, even in the case of large airgun arrays. Additionally, the airguns used during VSP are used for short periods of time. The continuous sounds produced by the drill rig are also far less energetic.

It should be noted that strandings known, or thought, to be related to sound exposure have not been recorded for marine mammal species in Cook Inlet. Beluga whale strandings in Cook Inlet are not uncommon; however, these events often coincide with extreme tidal fluctuations (“spring tides”) or killer whale sightings (Shelden *et al.*, 2003). For example, in August 2012, a group of Cook Inlet beluga whales stranded in the mud flats of Turnagain Arm during low tide and were able to swim free with the flood tide. NMFS does not expect any marine mammals will incur serious injury or mortality in Cook Inlet or strand as a result of the proposed drilling program.

#### Vessel Impacts

Vessel activity and noise associated with vessel activity will temporarily increase in the action area during BlueCrest’s oil and gas production drilling program as a result of the operation of a jack-up drill rig and the use of tow and other support vessels. While under tow, the rig and the tow vessels move at slow speeds (2–4 knots). The support barges supplying pipe to the drill rig can typically run at 7–8 knots but may move slower inside Cook Inlet. Based on this information, NMFS does not anticipate and does not propose to authorize take from vessel strikes.

Odontocetes, such as beluga whales, killer whales, and harbor porpoises, often show tolerance to vessel activity; however, they may react at long distances if they are confined by ice, shallow water, or were previously harassed by vessels (Richardson *et al.*, 1995a). Beluga whale response to vessel noise varies greatly from tolerance to extreme sensitivity depending on the

activity of the whale and previous experience with vessels (Richardson *et al.*, 1995a). Reactions to vessels depends on whale activities and experience, habitat, boat type, and boat behavior (Richardson *et al.*, 1995a) and may include behavioral responses, such as altered headings or avoidance (Blane and Jaakson, 1994; Erbe and Farmer, 2000); fast swimming; changes in vocalizations (Lesage *et al.*, 1999; Scheifele *et al.*, 2005); and changes in dive, surfacing, and respiration patterns.

There are few data published on pinniped responses to vessel activity, and most of the information is anecdotal (Richardson *et al.*, 1995a). Generally, sea lions in water show tolerance to close and frequently approaching vessels and sometimes show interest in fishing vessels. They are less tolerant when hauled out on land; however, they rarely react unless the vessel approaches within 100–200 m (330–660 ft; reviewed in Richardson *et al.*, 1995a).

#### Oil Spill and Discharge Impacts

As noted above, the specified activity involves towing the rig, drilling of wells, and other associated support activities in lower Cook Inlet during the 2016 open water season. The primary stressors to marine mammals that are reasonably expected to occur will be acoustic in nature. The likelihood of a large oil spill occurring during BlueCrest’s proposed drilling program is remote and effects from an event of this nature are not authorized. Offshore oil spill records in Cook Inlet during 1994–2011 show three spills during oil exploration (ADNR Division of Oil and Gas, 2011 unpub. data): Two oil spills at the UNOCAL Dillion Platform in June 2011 (two gallons) and December 2001 (three gallons); and one oil spill at the UNOCAL Monopod Platform in January 2002 (one gallon). During this same time period, 71 spills occurred offshore in Cook Inlet during oil production. Most spills ranged from 0.0011 to 1 gallon (42 spills), and only three spills were larger than 200 gallons: 210 gallons in July 2001 at the Cook Inlet Energy Stewart facility; 250 gallons in February 1998 at the King Salmon platform; and 504 gallons in October 1999 at the UNOCAL Dillion platform. All 71 crude oil spills from the offshore platforms, both exploration and production, totaled less than 2,140 gallons. Based on historical data, most oil spills have been small. Moreover, during more than 60 years of oil and gas exploration and development in Cook Inlet, there has not been a single oil well blowout, making it difficult to assign a specific risk factor to the possibility of such an event in Cook Inlet. However, the

probability of such an event is thought to be extremely low.

BlueCrest will have various measures and protocols in place that will be implemented to prevent oil releases from the wellbore. BlueCrest has planned formal routine rig maintenance and surveillance checks, as well as normal inspection and equipment checks to be conducted on the jack-up rig daily. The following steps will be in place to prevent oil from entering the water:

- Required inspections will follow standard operating procedures.
- Personnel working on the rig will be directed to report any unusual conditions to appropriate personnel.
- Oily equipment will be regularly wiped down with oil absorbent pads to collect free oil. Drips and small spillage from equipment will be controlled through use of drip pans and oil absorbent drop clothes.
- Oil absorbent materials used to contain oil spills or seeps will be collected and disposed of in sealed plastic bags or metal drums and closed containers.
- The platform surfaces will be kept clean of waste materials and loose debris on a daily basis.
- Remedial actions will be taken when visual inspections indicate deterioration of equipment (tanks) and/or their control systems.
- Following remedial work, and as appropriate, tests will be conducted to determine that the systems function correctly.

Drilling and completion fluids provide primary well control during drilling, work over, or completion operations. These fluids are designed to exert hydrostatic pressure on the wellbore that exceeds the pore pressures within the subsurface formations. This prevents undesired fluid flow into the wellbore. Surface mounted blowout preventer (BOP) equipment provides secondary well control. In the event that primary well control is lost, this surface equipment is used to contain the influx of formation fluid and then safely circulate it out of the wellbore.

The BOP is a large, specialized valve used to seal, control, and monitor oil and gas wells. BOPs come in variety of styles, sizes, and pressure ratings. For Cook Inlet, the BOP equipment used by BlueCrest will consist of:

- Three BOPs pressure safety levels of: (1) 5,000 pounds per square inch (psi), (2) 10,000 psi, and (3) 15,000 psi;
- A minimum of three 35 cm (13½ in), 10,000 psi WP ram type preventers;
- One 35 cm (13½ in) annular preventer;

- Choke and kill lines that provide circulating paths from/to the choke manifold;

- A two choke manifold that allows for safe circulation of well influxes out of the well bore; and

- A hydraulic control system with accumulator backup closing.

The wellhead, associated valves, and control systems provide blowout prevention during well production. These systems provide several layers of redundancy to ensure pressure containment is maintained. Well control planning is performed in accordance with Alaska Oil and Gas Conservation Commission (AOGCC) and the Department of the Interior's Bureau of Safety and Environment Enforcement (BSEE) regulations. The operator's policies and recommended practices are, at a minimum, equivalent to BSEE regulations. BOP test drills are performed on a frequent basis to ensure the well will be shut in quickly and properly. BOP testing procedures will meet American Petroleum Institute Recommended Practice No. 53 and AOGCC specifications. The BOP tests will be conducted with a nonfreezing fluid when the ambient temperature around the BOP stack is below 0 °C (32 °F). Tests will be conducted at least weekly and before drilling out the shoe of each casing string. The AOGCC will be contacted before each test is conducted, and will be onsite during BOP tests unless an inspection waiver is approved.

BlueCrest developed an Oil Discharge Prevention and Contingency Plan (ODPCP) and has submitted it for approval to Alaska's Department of Environmental Conservation (ADEC). NMFS reviewed the previous ODPCP covering the Cosmopolitan drilling program (prepared by Buccaneer Alaska Operations LLC) during the ESA consultation process for Cosmopolitan leases and found that with implementation of the safety features mentioned above that the risk of an oil spill was discountable. As an oil spill is not a likely occurrence, it is not a component of BlueCrest's specified activity for which NMFS is proposing to authorize take.

#### **Anticipated Effects on Marine Mammal Habitat**

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels produced by the drilling program (*i.e.* towing of the drill rig and the airguns). However, other potential impacts are also possible to the surrounding habitat from physical disturbance, discharges, and an oil spill

(which we do not anticipate or authorize). This section describes the potential impacts to marine mammal habitat from the specified activity, including impacts on fish and invertebrate species typically preyed upon by marine mammals in the area.

#### *Common Marine Mammal Prey in the Proposed Drilling Area*

Fish are the primary prey species for marine mammals in Cook Inlet. Beluga whales feed on a variety of fish, shrimp, squid, and octopus (Burns and Seaman, 1986). Common prey species in Knik Arm include salmon, eulachon and cod. Harbor seals feed on fish such as pollock, cod, capelin, eulachon, Pacific herring, and salmon, as well as a variety of benthic species, including crabs, shrimp, and cephalopods. Harbor seals are also opportunistic feeders with their diet varying with season and location. The preferred diet of the harbor seal in the Gulf of Alaska consists of pollock, octopus, capelin, eulachon, and Pacific herring (Calkins, 1989). Other prey species include cod, flat fishes, shrimp, salmon, and squid (Hoover, 1988). Harbor porpoises feed primarily on Pacific herring, cod, whiting (hake), pollock, squid, and octopus (Leatherwood *et al.*, 1982). In the Cook Inlet area, harbor porpoise feed on squid and a variety of small schooling fish, which would likely include Pacific herring and eulachon (Bowen and Siniff, 1999; NMFS, unpublished data). Killer whales feed on either fish or other marine mammals depending on genetic type (resident versus transient respectively). Killer whales in Knik Arm are typically the transient type (Shelden *et al.*, 2003) and feed on beluga whales and other marine mammals, such as harbor seal and harbor porpoise. The Steller sea lion diet consists of a variety of fishes (capelin, cod, herring, mackerel, pollock, rockfish, salmon, sand lance, etc.), bivalves, squid, octopus, and gastropods.

#### *Potential Impacts From Seafloor Disturbance on Marine Mammal Habitat*

There is a possibility of seafloor disturbance or increased turbidity in the vicinity of the drill sites. Seafloor disturbance could occur with bottom founding of the drill rig legs and anchoring system. These activities could lead to direct effects on bottom fauna, through either displacement or mortality. Increase in suspended sediments from seafloor disturbance also has the potential to indirectly affect bottom fauna and fish. The amount and duration of disturbed or turbid conditions will depend on sediment material.

The potential direct habitat impact by the BlueCrest drilling operation is limited to the actual drill-rig footprint defined as the area occupied and enclosed by the drill-rig legs. The jack-up rig will temporarily disturb one offshore location in lower Cook Inlet, where the wells are proposed to be drilled. Bottom disturbance would occur in the area where the three legs of the rig would be set down and where the actual wells would be drilled. The jack-up drill rig footprint would occupy three steel piles at 14 m (46 ft) diameter. The well casing would be a 76 cm (30 in) diameter pipe extending from the seafloor to the rig floor. The casing would only be in place during drilling activities at each potential well location. The total area of disturbance was calculated as 0.54 acres during the land use permitting process. The collective 2-acre footprint of the wells represents a very small fraction of the 7,300 square mile Cook Inlet surface area. Potential damage to the Cook Inlet benthic community will be limited to the actual surface area of the three spudcans (1,585 square feet each or 4,755 square feet total) that form the "foot" of each leg. Given the high tidal energy at the well site locations, drilling footprints are not expected to support benthic communities equivalent to shallow lower energy sites found in nearshore waters where harbor seals mostly feed. The presence of the drill rig is not expected to result in direct loss of marine mammal habitat.

#### *Potential Impacts From Sound Generation*

With regard to fish as a prey source for odontocetes and seals, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.*, 1981) and possibly avoid predators (Wilson and Dill, 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins, 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

Fish produce sounds that are associated with behaviors that include territoriality, mate search, courtship, and aggression. It has also been speculated that sound production may provide the means for long distance communication and communication under poor underwater visibility conditions (Zelick *et al.*, 1999), although the fact that fish communicate at low-frequency sound levels where the masking effects of ambient noise are naturally highest suggests that very long

distance communication would rarely be possible. Fish have evolved a diversity of sound generating organs and acoustic signals of various temporal and spectral contents. Fish sounds vary in structure, depending on the mechanism used to produce them (Hawkins, 1993). Generally, fish sounds are predominantly composed of low frequencies (less than 3 kHz).

Since objects in the water scatter sound, fish are able to detect these objects through monitoring the ambient noise. Therefore, fish are probably able to detect prey, predators, conspecifics, and physical features by listening to environmental sounds (Hawkins, 1981). There are two sensory systems that enable fish to monitor the vibration-based information of their surroundings. The two sensory systems, the inner ear and the lateral line, constitute the acoustico-lateralis system.

Although the hearing sensitivities of very few fish species have been studied to date, it is becoming obvious that the intra- and inter-specific variability is considerable (Coombs, 1981). Nedwell *et al.* (2004) compiled and published available fish audiogram information. A noninvasive electrophysiological recording method known as auditory brainstem response is now commonly used in the production of fish audiograms (Yan, 2004). Generally, most fish have their best hearing in the low-frequency range (*i.e.*, less than 1 kHz). Even though some fish are able to detect sounds in the ultrasonic frequency range, the thresholds at these higher frequencies tend to be considerably higher than those at the lower end of the auditory frequency range.

Literature relating to the impacts of sound on marine fish species can be divided into the following categories: (1) Pathological effects; (2) physiological effects; and (3) behavioral effects. Pathological effects include lethal and sub-lethal physical damage to fish; physiological effects include primary and secondary stress responses; and behavioral effects include changes in exhibited behaviors of fish. Behavioral changes might be a direct reaction to a detected sound or a result of the anthropogenic sound masking natural sounds that the fish normally detect and to which they respond. The three types of effects are often interrelated in complex ways. For example, some physiological and behavioral effects could potentially lead to the ultimate pathological effect of mortality. Hastings and Popper (2005) reviewed what is known about the effects of sound on fishes and identified studies needed to address areas of uncertainty relative to measurement of sound and the

responses of fishes. Popper *et al.* (2003/2004) also published a paper that reviews the effects of anthropogenic sound on the behavior and physiology of fishes.

Potential effects of exposure to continuous sound on marine fish include TTS, physical damage to the ear region, physiological stress responses, and behavioral responses such as startle response, alarm response, avoidance, and perhaps lack of response due to masking of acoustic cues. Most of these effects appear to be either temporary or intermittent and therefore probably do not significantly impact the fish at a population level. The studies that resulted in physical damage to the fish ears used noise exposure levels and durations that were far more extreme than would be encountered under conditions similar to those expected during BlueCrest's proposed exploratory drilling activities.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona, 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.*, 1993). In general, fish react more strongly to pulses of sound rather than a continuous signal (Blaxter *et al.*, 1981), such as the type of sound that will be produced by the drillship, and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

Investigations of fish behavior in relation to vessel noise (Olsen *et al.*, 1983; Ona, 1988; Ona and Godo, 1990) have shown that fish react when the sound from the engines and propeller exceeds a certain level. Avoidance reactions have been observed in fish such as cod and herring when vessels approached close enough that received sound levels are 110 dB to 130 dB (Nakken, 1992; Olsen, 1979; Ona and Godo, 1990; Ona and Toresen, 1988). However, other researchers have found that fish such as polar cod, herring, and capeline are often attracted to vessels (apparently by the noise) and swim toward the vessel (Rostad *et al.*, 2006). Typical sound source levels of vessel noise in the audible range for fish are 150 dB to 170 dB (Richardson *et al.*, 1995a). (Based on models, the 160 dB radius for the jack-up rig would extend approximately 33 ft [10 m]; therefore, fish would need to be in close proximity to the drill rig for the noise to be audible). In calm weather, ambient

noise levels in audible parts of the spectrum lie between 60 dB to 100 dB.

BlueCrest also proposes to conduct VSP surveys with an airgun array for a short period of time during the drilling season (only a few hours over 1–2 days over the course of the entire proposed drilling program). Airguns produce impulsive sounds as opposed to continuous sounds at the source. Short, sharp sounds can cause overt or subtle changes in fish behavior. Chapman and Hawkins (1969) tested the reactions of whiting (hake) in the field to an airgun. When the airgun was fired, the fish dove from 82 to 180 ft (25 to 55 m) depth and formed a compact layer. The whiting dove when received sound levels were higher than 178 dB re 1  $\mu$ Pa (Pearson *et al.*, 1992).

Pearson *et al.* (1992) conducted a controlled experiment to determine effects of strong noise pulses on several species of rockfish off the California coast. They used an airgun with a source level of 223 dB re 1  $\mu$ Pa. They noted:

- Startle responses at received levels of 200–205 dB re 1  $\mu$ Pa and above for two sensitive species, but not for two other species exposed to levels up to 207 dB;
- Alarm responses at 177–180 dB for the two sensitive species, and at 186 to 199 dB for other species;
- An overall threshold for the above behavioral response at about 180 dB;
- An extrapolated threshold of about 161 dB for subtle changes in the behavior of rockfish; and
- A return to pre-exposure behaviors within the 20–60 minute exposure period.

In summary, fish often react to sounds, especially strong and/or intermittent sounds of low frequency. Sound pulses at received levels of 160 dB re 1  $\mu$ Pa may cause subtle changes in behavior. Pulses at levels of 180 dB may cause noticeable changes in behavior (Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Skalski *et al.*, 1992). It also appears that fish often habituate to repeated strong sounds rather rapidly, on time scales of minutes to an hour. However, the habituation does not endure, and resumption of the strong sound source may again elicit disturbance responses from the same fish. Underwater sound levels from the drill rig and other vessels produce sounds lower than the response threshold reported by Pearson *et al.* (1992), and are not likely to result in major effects to fish near the proposed drill site.

Based on a sound level of approximately 140 dB, there may be some avoidance by fish of the area near



the jack-up while drilling, around the rig under tow, and around other support and supply vessels when underway. Any reactions by fish to these sounds will last only minutes (Mitson and Knudsen, 2003; Ona *et al.*, 2007) longer than the vessel is operating at that location or the drill rig is drilling. Any potential reactions by fish would be limited to a relatively small area within about 33 ft (10 m) of the drill rig during drilling. Avoidance by some fish or fish species could occur within portions of this area.

The lease areas do not support major populations of cod, Pollock, and sole, although all four salmon species and smelt may migrate through the area to spawning rivers in upper Cook Inlet (Shields and Dupuis, 2012). Residency time for the migrating finfish in the vicinity of an operating platform would be short-term, limiting fish exposure to noise associated with the proposed drilling program.

Some of the fish species found in Cook Inlet are prey sources for odontocetes and pinnipeds. A reaction by fish to sounds produced by BlueCrest's proposed operations would only be relevant to marine mammals if it caused concentrations of fish to vacate the area. Pressure changes of sufficient magnitude to cause that type of reaction would probably occur only very close to the sound source, if any would occur at all due to the low energy sounds produced by the majority of equipment proposed for use. Impacts on fish behavior are predicted to be inconsequential. Thus, feeding odontocetes and pinnipeds would not be adversely affected by this minimal loss or scattering, if any, which is not expected to result in reduced prey abundance. The proposed drilling area is not a common feeding area for baleen whales.

#### *Potential Impacts From Drilling Discharges*

The drill rig *Spartan151* will operate under the Alaska Pollutant Discharge Elimination System (APDES) general permit AKG-31-5021 for wastewater discharges (ADEC, 2012). This permit authorizes discharges from oil and gas extraction facilities engaged in exploration under the Offshore and Coastal Subcategories of the Oil and Gas Extraction Point Source Category (40 CFR part 435). Twelve effluents are authorized for discharge into Cook Inlet once ADEC discharge limits have been met. The authorized discharges include: Drilling fluids and drill cuttings, deck drainage, sanitary waste, domestic waste, blowout preventer fluid, boiler blow down, fire control system test

water, uncontaminated ballast water, bilge water, excess cement slurry, mud cuttings cement at sea floor, and completion fluids. Areas prohibited from discharge in the Cook Inlet are 10-meter (33-foot) isobaths, 5-meter (16-foot) isobaths, and other geographic area restrictions (AKG-31-5021.I.C.). The *Spartan151* is also authorized under EPA's Vessel General Permit for deck wash down and runoff, gray water, and gray water mixed with sewage discharges. The effluent limits and related requirements for these discharges in the Vessel General Permit are to minimize or eliminate to the extent achievable using control measures (best management practices) (EPA, 2011).

Drilling wastes include drilling fluids, known as mud, rock cuttings, and formation waters. Drilling wastes (non-hydrocarbon) will be discharged to the Cook Inlet under the approved APDES general permit. Drilling wastes (hydrocarbon) will be delivered to an onshore permitted location for disposal. During drilling, the onsite tool pusher/driller and qualified mud engineers will direct and maintain desired mud properties, and maintain the quantities of basic mud materials on site as dictated by good oilfield practice. BlueCrest will follow best management practices to ensure that a sufficient inventory of barite and lost circulation materials are maintained on the drilling vessel to minimize the possibility of a well upset and the likelihood of a release of pollutants to Cook Inlet waters. These materials can be re-supplied, if required, using the supply vessel. Because adverse weather could prevent immediate re-supply, sufficient materials will be available on board to completely rebuild the total circulating volume. BlueCrest will conduct an Environmental Monitoring Study of relevant hydrographic, sediment hydrocarbon, and heavy metal data from surveys conducted before and during drilling mud disposal and up to a least one year after drilling operations cease in accordance with the APDES general permit for discharges of drilling muds and cuttings.

Non-drilling wastewater includes deck drainage, sanitary waste, domestic waste, blowout preventer fluid, boiler blow down, fire control test water, bilge water, non-contact cooling water, and uncontaminated ballast water. Non-drilling wastewater will be discharged into Cook Inlet under the approved APDES general permit or delivered to an onshore permitted location for disposal. Mud cuttings will be constantly tested. No hydrocarboned muds will be permitted to be discharged into Cook

Inlet. They will be hauled offsite. Solid waste (e.g., packaging, domestic trash) will be classified, segregated, and labeled as general, universal, and Resource Conservation and Recovery Act exempt or non-exempt waste. It will be stored in containers at designated accumulation areas. Then, it will be packaged and palletized for transport to an approved on-shore disposal facility. No hazardous wastes should be generated as a result of this project. However, if any hazardous wastes were generated, it would be temporarily stored in an onboard satellite accumulation area and then transported offsite for disposal at an approved facility.

With oil and gas platforms presently operating in Cook Inlet, there is concern for continuous exposure to potentially toxic heavy metals and metalloids (*i.e.*, mercury, lead, cadmium, copper, zinc, and arsenic) that are associated with oil and gas development and production. These elements occur naturally in the earth's crust and the oceans but many also have anthropogenic origins from local sources of pollution or from contamination from atmospheric distribution.

Discharging drill cuttings or other liquid waste streams generated by the drilling vessel could potentially affect marine mammal habitat. Toxins could persist in the water column, which could have an impact on marine mammal prey species. However, despite a considerable amount of investment in research on exposures of marine mammals to organochlorines or other toxins, there have been no marine mammal deaths in the wild that can be conclusively linked to the direct exposure to such substances (O'Shea, 1999).

Drilling muds and cuttings discharged to the seafloor can lead to localized increased turbidity and increase in background concentrations of barium and occasionally other metals in sediments and may affect lower trophic organisms. Drilling muds are composed primarily of bentonite (clay), and the toxicity is therefore low. Heavy metals in the mud may be absorbed by benthic organisms, but studies have shown that heavy metals do not bio-magnify in marine food webs (Neff *et al.*, 1989). Effects on benthic communities are nearly always restricted to a zone within about 328 to 492 ft (100 to 150 m) of the discharge, where cuttings accumulations are greatest. Discharges and drill cuttings could impact fish by displacing them from the affected area.

Levels of heavy metals and other elements (cadmium, mercury, selenium, vanadium, and silver) were generally



lower in the livers of Cook Inlet beluga whales than those of other beluga whale stocks, while copper was higher (Becker *et al.*, 2001). Hepatic methyl mercury levels were similar to those reported for other beluga whales (Geraci and St. Aubin, 1990). The relatively high hepatic concentration of silver found in the eastern Chukchi Sea and Beaufort Sea stocks of belugas was also found in the Cook Inlet animals, suggesting a species-specific phenomenon. However, because of the limited discharges, no water quality impacts are anticipated that would negatively affect habitat for Cook Inlet marine mammals.

*Potential Impacts From Drill Rig Presence*

The horizontal dimensions of the *Spartan151* jack-up rig are 147 ft by 30 ft. The dimensions of the drill rig (less than one football field on either side) are not significant enough to cause a large-scale diversion from the animals' normal swim and migratory paths. Any deflection of marine mammal species due to the physical presence of the drill rig would be very minor. The drill rig's physical footprint is small relative to the size of the geographic region it will occupy and will likely not cause marine mammals to deflect greatly from their typical migratory route. Also, even if animals may deflect because of the presence of the drill rig, Cook Inlet is

much larger in size than the length of the drill rig (many dozens of miles vs. less than one football field), and animals would have other means of passage around the drill rig. In sum, the physical presence of the drill rig is not likely to cause a significant deflection to migrating marine mammals.

*Potential Impacts From an Oil Spill*

As noted above, an oil spill is not a likely occurrence, it is not a component of BlueCrest's specified activity for which NMFS is proposing to authorize take. Also, as noted above, NMFS previously considered potential effects of an oil spill in the unlikely event that it happened and determined the effects discountable, and there has been no new information that would change this determination at this time.

Based on the consideration of potential types of impacts to marine mammal habitat, and taking into account the very low potential for a large or very large oil spill, overall, the proposed specified activity is not expected to cause significant impacts on habitats used by the marine mammal species in the proposed project area, including the food sources that they utilize.

**Proposed Mitigation**

In order to issue an incidental take authorization (ITA) 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 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). Later in this document in the "Proposed Incidental Harassment Authorization" section, NMFS lays out the proposed conditions for review, as they would appear in the final IHA (if issued).

The drill rig does not emit sound levels that would result in Level A harassment (injury), which NMFS typically requires applicants to avoid through mitigation (such as shutdowns). For continuous sounds, such as those produced by drilling operations and rig tow, NMFS uses a received level of 120-dB (rms) for the onset of Level B harassment. For impulse sounds, such as those produced by the airgun array during the VSP surveys or the impact hammer during drive pipe driving, NMFS uses a received level of 160-dB (rms) for the onset of Level B harassment. The current Level A (injury) harassment threshold is 180 dB (rms) for cetaceans and 190 dB (rms) for pinnipeds. Table 2 outlines the various applicable radii that inform mitigation.

TABLE 2—APPLICABLE MITIGATION AND SHUTDOWN RADII FOR BLUECREST'S PROPOSED LOWER COOK INLET DRILLING PROGRAM

	190 dB radius	180 dB radius	160 dB radius	120 dB radius
Impact hammer during drive pipe hammering .....	60 m (200 ft) .....	250 m (820 ft) .....	1.6 km (1 mi) .....	NA.
Airguns during VSP .....	120 m (394 ft) .....	240 m (787 ft) .....	2.5 km (1.55 mi) ..	NA.

NA = Not applicable.

*Mitigation Measures Proposed by BlueCrest*

For the proposed mitigation measures, BlueCrest listed the following protocols to be implemented during its drilling program in Cook Inlet.

1. Drive Pipe Hammering Measures

Two protected species observers (PSOs), working alternate shifts, will be stationed aboard the drill rig during all pipe driving activities at the well. Standard marine mammal observing field equipment will be used, including reticule binoculars (10x42), big-eye binoculars (30x), inclinometers, and range finders. The PSOs will be stationed as close to the well head as safely possible, and will observe from the drill rig during this 2–3 day portion of the proposed program out to the 160

dB (rms) radius of 1.6 km (1 mi). Drive pipe hammering will be limited to daylight hours, and when sea conditions are light; therefore, marine mammal observation conditions will be generally good. If cetaceans enter within the 180 dB (rms) radius of 250 m (820 ft), or if pinnipeds enter within the 190 dB (rms) radius of 60 m (200 ft), then use of the impact hammer will cease. If any beluga whales, or any cetacean for which take has not been authorized, are detected entering the 160 dB disturbance zone activities will cease until the animal has been visually confirmed to clear the zone or is unseen for at least 30 minutes. Following a shutdown of impact hammering activities, the applicable zones must be clear of marine mammals for at least 30 minutes prior to restarting activities.

BlueCrest proposes to follow a ramp-up procedure during impact hammering activities. PSOs will visually monitor out to the 160 dB radius for at least 30 minutes prior to the initiation of activities. If no marine mammals are detected during that time, then BlueCrest can initiate impact hammering using a "soft start" technique. Hammering will begin with an initial set of three strikes at 40 percent energy followed by a 1 min waiting period, then two subsequent three-strike sets. This "soft-start" procedure will be implemented anytime impact hammering has ceased for 30 minutes or more. Impact hammer "soft-start" will not be required if the hammering downtime is for less than 30 minutes and visual surveys are continued throughout the silent period

and no marine mammals are observed in the applicable zones during that time. Monitoring will occur during all hammering sessions.

## 2. VSP Airgun Measures

As with pipe driving, two PSOs will observe from the drill rig during this 1–2 day portion of the proposed program out to the 160 dB radius of 2.5 km (1.55 mi). Standard marine mammal observing field equipment will be used, including reticule binoculars (10x42), big-eye binoculars (30x), inclinometers, and range finders. Monitoring during zero-offset VSP will be conducted by two PSOs operating from the drill rig. During walk-away VSP operations, an additional two PSOs will monitor from the seismic source vessel. VSP activities will be limited to daylight hours, and when sea conditions are light; therefore, marine mammal observation conditions will be generally good. If cetaceans enter within the 180 dB (rms) radius of 240 m (787 ft) or if pinnipeds enter within the 190 dB (rms) radius of 120 m (394 ft), then use of the airguns will cease. If any beluga whales, or any cetacean for which take has not been authorized, are detected entering the 160 dB disturbance zone, activities will cease until the animal has been visually confirmed to clear the zone or is unseen for at least 30 minutes. Following a shutdown of airgun operations, the applicable zones must be clear of marine mammals for at least 30 minutes prior to restarting activities.

BlueCrest proposes to follow a ramp-up procedure during airgun operations. PSOs will visually monitor out to the 160 dB radius for at least 30 minutes prior to the initiation of activities. If no marine mammals are detected during that time, then BlueCrest can initiate airgun operations using a “ramp-up” technique. Airgun operations will begin with the firing of a single airgun, which will be the smallest gun in the array in terms of energy output (dB) and volume (in<sup>3</sup>). Operators will then continue ramp-up by gradually activating additional airguns over a period of at least 30 minutes (but not longer than 40 minutes) until the desired operating level of the airgun array is obtained. This ramp-up procedure will be implemented anytime airguns have not been fired for 30 minutes or more. Airgun ramp-up will not be required if the airguns have been off for less than 30 minutes and visual surveys are continued throughout the silent period and no marine mammals are observed in the applicable zones during that time. Monitoring will occur during all airgun usage.

## 3. Oil Spill Plan

BlueCrest developed an Oil Discharge Prevention and Contingency Plan (ODPCP) and has submitted it for approval to Alaska’s Department of Environmental Conservation (ADEC). NMFS reviewed the previous ODPCP covering the Cosmopolitan drilling program (prepared by Buccaneer Alaska Operations LLC) during the ESA consultation process for Cosmopolitan leases and found that with implementation of the safety features mentioned above that the risk of an oil spill was discountable. The new ODPCP for operations under BlueCrest was approved on March 30, 2016.

## 4. Pollution Discharge Plan

When the drill rig is towed or otherwise floating it is classified as a vessel (like a barge). During those periods, it is covered under a form of National Pollutant Discharge Elimination System permit known as a Vessel General Permit. This permit remains federal and is a “no discharge permit,” which allows for the discharge of storm water and closed system fire suppression water but no other effluents.

When the legs are down, the drill rig becomes a facility. During those periods, it is covered under an approved APDES. Under the APDES, certain discharges are permitted. However, BlueCrest is not permitted to discharge gray water, black water, or hydrocarboned muds; they are all hauled off and not discharged.

### *Mitigation Measures Proposed by NMFS*

NMFS proposes that: during rig towing operations, speed will be reduced to 8 knots or less, as safety allows, at the approach of any whales or Steller sea lions within 2,000 ft (610 m) of the towing operations; and when BlueCrest utilizes helicopters for support operations that the helicopters must maintain an altitude of at least 1,000 ft (305 m), except during takeoffs, landings, or emergency situations.

### *Mitigation Conclusions*

NMFS has carefully evaluated BlueCrest’s proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of affecting 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 measures are

expected to minimize adverse impacts to marine mammals;

- The proven or likely efficacy of the measures to minimize adverse impacts as planned; and
- The practicability of the measures 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 below:

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 received levels of seismic airguns, impact hammers, drill rig deep well pumps, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of seismic airguns impact hammers, drill rig deep well pumps, or other activities expected 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 received levels of seismic airguns impact hammers, drill rig deep well pumps, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, 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 our evaluation of the applicant’s proposed measures, as well as other measures proposed by NMFS, NMFS has preliminarily determined that implementation of these mitigation measures provide the means of effecting

the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

### Proposed Monitoring and Reporting

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 ITAs 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 are expected to be present in the proposed action area. BlueCrest submitted information regarding marine mammal monitoring to be conducted during the proposed drilling program as part of the IHA application. That information can be found in the Appendix of their application. The monitoring measures may be modified or supplemented based on comments or new information received from the public during the public comment period.

Monitoring measures proposed by the applicant or prescribed by NMFS should accomplish one or more of the following top-level 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.

### Proposed Monitoring Measures

#### 1. Visual Monitoring

PSOs will be required to monitor the area for marine mammals aboard the drill rig during drilling operations, drive pipe hammering, and VSP operations. Standard marine mammal observing field equipment will be used, including reticule binoculars, Big-eye binoculars, inclinometers, and range-finders. Drive pipe hammering and VSP operations will not occur at night, so PSOs will not be on watch during nighttime. At least one PSO will be on duty at all times when operations are occurring. Shifts shall not last more than 4 hours, and PSOs will not observe for more than 12 hours in a 24-hour period.

#### 2. Sound Source Verification Monitoring

Sound source verification (SSV) measurements have already been conducted for the *Spartan151* and all other sound generating activities planned at the Cosmopolitan well site by MAI (2011). No SSV measurements are planned at this time for the 2016 program.

### Reporting Measures

#### 1. 90-Day Technical Report

Daily field reports will be prepared that include daily activities, marine mammal monitoring efforts, and a record of the marine mammals and their behaviors and reactions observed that day. These daily reports will be used to help generate the 90-day technical report. A report will be due to NMFS no later than 90 days after the expiration of the IHA (if issued). The Technical Report will include the following:

- Summaries of monitoring effort (*e.g.*, total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals).
- Analyses of the effects of various factors influencing detectability of marine mammals (*e.g.*, sea state, number of observers, and fog/glare).
- Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover.
- Analyses of the effects of operations.
- Sighting rates of marine mammals (and other variables that could affect detectability), such as: (i) Initial sighting distances versus operational activity state; (ii) closest point of approach versus operational activity state; (iii) observed behaviors and types of movements versus operational activity state; (iv) numbers of sightings/individuals seen versus operational activity state; (v) distribution around the drill rig versus operational activity state; and (vi) estimates of take by Level B harassment based on presence in the Level B harassment zones.

#### 2. Notification of Injured or Dead Marine Mammals

In the unanticipated event that BlueCrest's specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (*e.g.*, ship-strike, gear interaction, and/or entanglement), BlueCrest would immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, the Alaska Region Protected Resources Division, NMFS, and the Alaska Regional Stranding Coordinators. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with BlueCrest to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. BlueCrest would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that BlueCrest discovers an injured or dead marine mammal, and the lead PSO 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 described in the next paragraph), BlueCrest would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, the Alaska Region Protected Resources Division, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators. The report would include the same information identified in the paragraph above. If the observed marine mammal is dead, activities would be able to continue while NMFS reviews the circumstances of the incident. If the observed marine mammal is injured, measures described below must be implemented. NMFS would work with BlueCrest to determine whether modifications in the activities are appropriate.

In the event that BlueCrest discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., carcass with moderate to advanced decomposition, or scavenger damage), BlueCrest would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, the Alaska

Region Protected Resources Division, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. BlueCrest would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. If the observed marine mammal is dead, activities may continue while NMFS reviews the circumstances of the incident. If the observed marine mammal is injured, measures described below must be implemented. In this case, NMFS will notify BlueCrest when activities may resume.

### 3. Injured Marine Mammals

The following describe the specific actions BlueCrest must take if a live marine mammal stranding is reported in Cook Inlet coincident to, or within 72 hours of seismic activities involving the use of airguns. A live stranding event is defined as a marine mammal: (i) On a beach or shore of the United States and unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in apparent need of medical attention; or (iii) in the waters under the jurisdiction of the United States (including navigable waters) but is unable to return to its natural habitat under its own power or without assistance.

The shutdown procedures described here are not related to the investigation of the cause of the stranding and their implementation is in no way intended to imply that BlueCrest's airgun operation is the cause of the stranding. Rather, shutdown procedures are intended to protect marine mammals exhibiting indicators of distress by minimizing their exposure to possible additional stressors, regardless of the factors that initially contributed to the stranding.

Should BlueCrest become aware of a live stranding event (from NMFS or another source), BlueCrest must immediately implement a shutdown of the airgun array. A shutdown must be implemented whenever the animal is within 5 km of the airgun array. Shutdown procedures will remain in effect until NMFS determines that, and advises BlueCrest that, all live animals involved in the stranding have left the area (either of their own volition or following herding by responders).

Within 48 hours of the notification of the live stranding event, BlueCrest must inform NMFS where and when they were operating airguns and at what discharge volumes. BlueCrest must

appoint a contact who can be reached 24/7 for notification of live stranding events. Immediately upon notification of the live stranding event, this person must order the immediate shutdown of the airguns. These conditions are in addition to those noted above.

### *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]. Only take by Level B behavioral harassment of some species is anticipated as a result of the proposed drilling program. Anticipated impacts to marine mammals are associated with noise propagation from the sound sources (e.g., drill rig and tow, airguns, and impact hammer) used in the drilling program. Additional disturbance to marine mammals may result from visual disturbance of the drill rig or support vessels. No take is expected to result from vessel strikes because of the slow speed of the vessels (2–4 knots while rig is under tow; 7–8 knots for supply barges).

BlueCrest requests authorization to take nine marine mammal species by Level B harassment. These nine marine mammal species are: beluga whale; humpback whale; gray whale; minke whale; killer whale; harbor porpoise; Dall's porpoise; Steller sea lion; and harbor seal. In April 2013, NMFS Section 7 ESA biologists concurred that Buccaneer's proposed Cosmopolitan exploratory drilling program was not likely to adversely affect Cook Inlet beluga whales or beluga whale critical habitat. Since the sale of the Cosmopolitan leases from Buccaneer to BlueCrest and the slight change in the program (e.g., drilling of up to three wells instead of two), Mitigation measures requiring shutdowns of activities before belugas enter the Level B harassment zones will be required in any issued IHA. Therefore, the potential for take of belugas would be eliminated; however, a small number of takes are included to cover any unexpected or accidental take.

As noted previously in this document, for continuous sounds, for impulse sounds such as those produced by the airgun array during the VSP surveys or

the impact hammer during drive pipe hammering, NMFS uses a received level of 160-dB (rms) to indicate the onset of

Level B harassment. The current Level A (injury) harassment threshold is 180 dB (rms) for cetaceans and 190 dB (rms)

for pinnipeds. Table 3 outlines the current acoustic criteria.

TABLE 3—ACOUSTIC EXPOSURE CRITERIA USED BY NMFS

Criterion	Criterion definition	Threshold
Level A Harassment (Injury) .....	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 microPa-m (cetaceans)/190 dB re 1 micro-m (pinnipeds) root mean square (rms).
Level B Harassment .....	Behavioral Disruption (for impulse noises) .....	160 dB re 1 microPa-m (rms).

Section 6 of BlueCrest’s application contains a description of the methodology used by BlueCrest to estimate takes by harassment, including calculations for the 120 dB (rms) and 160 dB (rms) isopleths and marine mammal densities in the areas of operation (see ADDRESSES), which is also provided in the following sections. NMFS verified BlueCrest’s methods, and used the density and sound isopleth measurements in estimating take. However, NMFS also include a duration factor in the estimates presented below, which is not included in BlueCrest’s application.

The proposed take estimates presented in this section were calculated by multiplying the best available density estimate for the species (from NMFS aerial surveys 2005–2014) by the area of ensonification for each type of activity by the total number of days that each activity would occur. While the density and sound isopleth data helped to inform the decision for the proposed estimated take levels for harbor porpoises and harbor seals, NMFS also considered the information regarding marine mammal sightings during BlueCrest’s 2013 Cosmopolitan #A–1 drilling program. Additional detail is provided next.

*Ensonified Areas*

Drive Pipe Hammering

The Delmar D62–22 diesel impact hammer proposed to be used by BlueCrest to drive the 30-inch drive pipe was previously acoustically measured by Blackwell (2005) in upper Cook Inlet. She found that sound exceeding 190 dB Level A noise limits for pinnipeds extend to about 200 ft (60 m), and 180 dB Level A impacts to cetaceans to about 820 ft (250 m). Level B disturbance levels of 160 dB extended to just less than 1 mi (1.6 km). The associated ZOI (area ensonified by noise greater than 160 dB) is 8.3 km<sup>2</sup> (3.1 mi<sup>2</sup>).

VSP Airguns

Illingworth and Rodkin (2014) measured noise levels during VSP operations associated with post-drilling operations at the Cosmopolitan #A–1 site in lower Cook Inlet during July 2013. The results indicated that the 720 cubic inch airgun array used during the operation produced noise levels exceeding 160 dB re 1 μPa out to a distance of approximately 8,100 ft (2,470 m). Based on these results, the associated ZOI would be 19.17 km<sup>2</sup> (7.4 mi<sup>2</sup>). See Table 4.

TABLE 4—ZONES OF INFLUENCE FOR PROPOSED ACTIVITIES

	Drive pipe hammering	VSP Airguns
ZOI (km <sup>2</sup> ) ..	8.3	19.17

*Marine Mammal Densities*

Density estimates were derived for Cook Inlet marine mammals other than belugas as described above. An average density was derived for each species based on NMFS aerial survey data from 2005–2014.

For belugas, the ensonified area associated with each activity was overlaid on a map of the density cells derived in Goetz et al. (2012), the cells falling within each ensonified area were quantified, and average cell density calculated. Figure 6–1 in BlueCrest’s application shows the associated ensonified areas and beluga density contours relative to the rig tow beginning from Port Graham, while Figure 6–2 shows the same but assumes the rig tow to the well site will begin in upper Cook Inlet. The quantified results are found in Table 5 below, and show that throughout the proposed activity areas the beluga densities are very low.

TABLE 5—MEAN RAW DENSITIES OF BELUGA WHALES WITH ACTIVITY ACTION AREAS BASED ON THE GOETZ ET AL. (2012) COOK INLET BELUGA WHALE DISTRIBUTION MODELING

Activity	Number of cells	Mean density	Density range
Pipe Driving .....	8	0.000344	0.000200–0.000562
VSP .....	19	0.000346	0.000136–0.000755

This data was then multiplied by the area ensonified in one day, then multiplied by the number of expected days of each type of operation.

*Proposed Take Estimates*

As noted previously in this document, the potential number of animals that might be exposed to receive continuous SPLs of ≥120 dB re 1 μPa (rms) and pulsed SPLs of ≥160 dB re 1 μPa (rms) was calculated by multiplying:

- The expected species density;
- the anticipated area to be ensonified (zone of influence [ZOI]); and
- the estimated total duration of each of the activities expressed in days (24 hrs).

To derive at an estimated total duration for each of the activities the following assumptions were made:

- The maximum total duration of impact hammering during drive pipe driving would be 3 days (however, the

hammer would not be used continuously over that time period).

- The total duration of the VSP data acquisition runs is estimated to be up to 2 days (however, the airguns would not be used continuously over that time period).

Using all of these assumptions, Table 6 outlines the total number of Level B harassment exposures for each species from each of the four activities using the

calculation and assumptions described here.

TABLE 6—POTENTIAL NUMBER OF EXPOSURES TO LEVEL B HARASSMENT THRESHOLDS DURING BLUECREST’S PROPOSED DRILLING PROGRAM DURING THE 2016 OPEN WATER SEASON

Species	Pipe driving	VSP	Total
Beluga whale	0.1	0.1	0.2
Gray whale	<1	<1	<1
Harbor seal	20.7	31.9	52.6
Harbor porpoise	0.3	0.5	0.8
Killer whale	0.1	0.1	0.2
Steller sea lion	0.7	1.0	1.7
Minke whale	<1	<1	<1
Humpback whale	0.1	0.1	0.2
Dall’s porpoise	<1	<1	<1

In the IHA application, BlueCrest notes that these estimates may be low regarding harbor porpoise and killer whales, and high regarding harbor seals, based on 2013 marine mammal monitoring data (Owl Ridge, 2014). During the 2013 monitoring, 152 harbor porpoise were observed within about 2 km (1.2 mi). If we assume that the 1,999 hours of observation effort in 2013 equates to about 83 days (24-hr periods), then we can assume that about 2 harbor porpoise were recorded for every 24 hr of monitoring effort in 2013. Consequently, it is reasonable to assume that the 15 total days of activity associated with pipe driving and VSP combined could expose approximately

30 harbor porpoise. Following this same logic, the 17 killer whales, 77 harbor seals, and 7 Steller sea lions that were observed within about 2 km (1.2 mi) in 2013, would equate to an expectation of about 3 killer whale, 14 harbor seals, and 1 Steller sea lion occurring within 2 km (1.2 mi) of the rig during the planned 15 total days of pipe driving and VSP activity. The larger of the two estimates was used for each species.

For the less common marine mammals such as gray, minke, and killer whales and Dall’s porpoises, population estimates within lower Cook Inlet yield low density estimates. Still, at even very low densities, it is possible to encounter these marine mammals

during BlueCrest operations, as evidenced by the 2013 marine mammal sighting data. Marine mammals may approach the drilling rig out of curiosity, and animals may approach in a group. Thus, requested take authorizations for these species are primarily based on average group size, the potential for attraction, and the 2013 marine mammal sighting data (with buffers added in to account for missed sightings).

Table 7 outlines density estimates, number of NMFS’ proposed Level B harassment takes, the abundance of each species in Cook Inlet, the percentage of each species or stock estimated to be taken, and current population trends.

TABLE 7—DENSITY ESTIMATES, PROPOSED NUMBER OF LEVEL B HARASSMENT TAKES SPECIES OR STOCK ABUNDANCE, PERCENTAGE OF POPULATION PROPOSED TO BE TAKEN, AND SPECIES TREND STATUS

Species	Density (#/km <sup>2</sup> )	Proposed Level B takes	Abundance	Percentage of population	Trend
Beluga whale	See Table 4	5	312	1.6	Decreasing.
Gray whale	9.46E-05	5	19,126	<0.1	Stable/increasing.
Harbor Seal	0.2769	53	22,900	0.2	Stable.
Harbor Porpoise	0.0042	15	31,046	0.1	No reliable information.
Killer Whale	0.0008	15	2,347 (resident); 587(transient).	0.6 (resident); 2.6 (transient).	Resident stock possibly increasing; Transient stock stable.
Steller sea lion	0.0091	25	55,422	0.1	Decreasing with regional variability (some increasing or stable).
Minke whale	1.14E-05	5	1,233	0.4	No reliable information.
Humpback whale	0.0012	15	10,103	0.2	Southeast Alaska increasing.
Dall’s porpoise	0.0002	25	83,400	0.3	No reliable information.

**Analysis and Preliminary 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). A negligible impact finding is based on the lack of likely adverse effects on annual rates of

recruitment or survival (*i.e.*, population-level effects). 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 must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location,

feeding, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species. To avoid repetition, the discussion of our analyses applies to all the species listed in Table 7, given that the anticipated effects of this project on marine mammals are expected to be relatively similar in nature. There is no information about the size, status, or structure of any species or stock that

would lead to a different analysis for this activity, except where species-specific factors are identified and analyzed.

No injuries or mortalities are anticipated to occur as a result of BlueCrest's proposed drilling program, and none are proposed to be authorized. Injury, serious injury, or mortality could occur if there were a large or very large oil spill. However, as discussed previously in this document, the likelihood of a spill is discountable. BlueCrest has implemented many design and operational standards to mitigate the potential for an oil spill of any size. NMFS does not propose to authorize take from an oil spill, as it is not part of the specified activity. Additionally, animals in the area are not expected to incur hearing impairment (*i.e.*, TTS or PTS) or non-auditory physiological effects. Instead, any impact that could result from BlueCrest's activities is most likely to be behavioral harassment and is expected to be of limited duration. The marine mammals estimated to be taken represent small percentages of their respective species or stocks.

The proposed drilling program does not fall within critical habitat designated in Cook Inlet for beluga whales or within critical habitat designated for Steller sea lions. The Cosmopolitan State unit is nearly 100 mi south of beluga whale Critical Habitat Area 1 and approximately 27 mi south of Critical Habitat Area 2. It is also located about 25 mi north of the isolated patch of Critical Habitat Area 2 found in Kachemak Bay. Area 2 is based on dispersed fall and winter feeding and transit areas in waters where whales typically appear in smaller densities or deeper waters (76 FR 20180, April 11, 2011). During the proposed period of operations, the majority of Cook Inlet beluga whales will be in Critical Habitat Area 1, well north of the proposed drilling area. The proposed activities are not anticipated to adversely affect beluga whale critical habitat, and mitigation measures and safety protocols are in place to reduce any potential even further.

Sound levels emitted during the proposed activity are anticipated to be low overall with the exception of impact hammering and VSP operations. The continuous sounds produced by the drill rig do not rise to the level thought to cause take in marine mammals. Additionally, impact hammering and airgun operations will occur for extremely limited time periods (for a few hours at a time for 1–3 days and for a few hours at a time for 1–2 days, respectively). Moreover, auditory injury

has not been noted in marine mammals from these activities. Mitigation measures proposed for inclusion in any issued IHA will reduce these potentials even further.

The addition of the jack-up rig and a few support vessels and sound due to rig and vessel operations associated with the drilling program would not be outside the present experience of marine mammals in Cook Inlet, although levels may increase locally. Given the large number of vessels in Cook Inlet and the apparent habituation to vessels by Cook Inlet marine mammals that may occur in the area, vessel activity and sound is not expected to have effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Potential impacts to marine mammal habitat were discussed previously in this document (see the "Anticipated Effects on Habitat" section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect annual rates of recruitment or survival of marine mammals in the area. Based on the size of Cook Inlet where feeding by marine mammals occurs versus the localized area of drilling program activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere nearby. Additionally, the direct project area is not within in the primary beluga feeding and calving habitat.

Taking into account the mitigation measures that are planned, effects on marine mammals are generally expected to be restricted to avoidance of a limited area around the drilling operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment." Animals are not expected to permanently abandon any area that is part of the drilling operations, and any behaviors that are interrupted during the activity are expected to resume once the activity ceases. Only a small portion of marine mammal habitat will be affected at any time, and other areas within Cook Inlet will be available for necessary biological functions. 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 preliminarily finds that the total marine mammal take from BlueCrest's proposed drilling program will not adversely affect annual rates of recruitment or

survival, and therefore will have a negligible impact on the affected marine mammal species or stocks.

#### *Small Numbers*

The requested takes proposed to be authorized for each species are presented in Table 7 above. The proposed authorized takes for each species represent percentages ranging from <0.1 up to 1.6 of the respective stock population estimates for each species. These estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment if each animal is taken only once. The numbers of marine mammals taken are small relative to the affected species or stock sizes. In addition, the mitigation and monitoring measures (described previously in this document) proposed for inclusion in the IHA (if issued) are expected to reduce even further any potential disturbance to marine mammals. NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

#### **Impact on Availability of Affected Species for Taking for Subsistence Uses**

##### *Relevant Subsistence Uses*

The subsistence harvest of marine mammals transcends the nutritional and economic values attributed to the animal and is an integral part of the cultural identity of the region's Alaska Native communities. Inedible parts of the whale provide Native artisans with materials for cultural handicrafts, and the hunting itself perpetuates Native traditions by transmitting traditional skills and knowledge to younger generations (NOAA, 2007).

The Cook Inlet beluga whale has traditionally been hunted by Alaska Natives for subsistence purposes. For several decades prior to the 1980s, the Native Village of Tyonek residents were the primary subsistence hunters of Cook Inlet beluga whales. During the 1980s and 1990s, Alaska Natives from villages in the western, northwestern, and North Slope regions of Alaska either moved to or visited the south central region and participated in the yearly subsistence harvest (Stanek, 1994). From 1994 to 1998, NMFS estimated 65 whales per year (range 21–123) were taken in this harvest, including those successfully taken for food and those struck and lost. NMFS has concluded that this number is high enough to account for the estimated 14 percent annual decline in the population during this time (Hobbs *et al.*, 2008). Actual mortality may have been higher, given the difficulty of

estimating the number of whales struck and lost during the hunts. In 1999, a moratorium was enacted (Public Law 106–31) prohibiting the subsistence take of Cook Inlet beluga whales except through a cooperative agreement between NMFS and the affected Alaska Native organizations. Since the Cook Inlet beluga whale harvest was regulated in 1999 requiring cooperative agreements, five beluga whales have been struck and harvested. Those beluga whales were harvested in 2001 (one animal), 2002 (one animal), 2003 (one animal), and 2005 (two animals). The Native Village of Tyonek agreed not to hunt or request a hunt in 2007, when no co-management agreement was to be signed (NMFS, 2008a).

On October 15, 2008, NMFS published a final rule that established long-term harvest limits on Cook Inlet beluga whales that may be taken by Alaska Natives for subsistence purposes (73 FR 60976). That rule prohibits harvest for a 5-year interval period if the average stock abundance of Cook Inlet beluga whales over the prior five-year interval is below 350 whales. Harvest levels for the current 5-year planning interval (2013–2017) are zero because the average stock abundance for the previous five-year period (2008–2012) was below 350 whales. Based on the average abundance over the 2002–2007 period, no hunt occurred between 2008 and 2012 (NMFS, 2008a). The Cook Inlet Marine Mammal Council, which managed the Alaska Native Subsistence fishery with NMFS, was disbanded by a unanimous vote of the Tribes' representatives on June 20, 2012. At this time, no harvest is expected in 2016.

Data on the harvest of other marine mammals in Cook Inlet are sparse. Some data are available on the subsistence harvest of harbor seals, harbor porpoises, and killer whales in Alaska in the marine mammal stock assessments. However, these numbers are for the Gulf of Alaska including Cook Inlet, and they are not indicative of the harvest in Cook Inlet.

Some detailed information on the subsistence harvest of harbor seals is available from past studies conducted by the Alaska Department of Fish & Game (Wolfe *et al.*, 2009). In 2008, only 33 harbor seals were taken for harvest in the Upper Kenai-Cook Inlet area. In the same study, reports from hunters stated that harbor seal populations in the area were increasing (28.6%) or remaining stable (71.4%). The specific hunting regions identified were Anchorage, Homer, Kenai, and Tyonek, and hunting generally peaks in March, September, and November (Wolfe *et al.*, 2009). Since 1992, Alaska Natives from the

Cook Inlet villages of Homer and Kenai have annually taken (harvested plus struck and lost) an average of 14–15 harbor seals. There are no data for Ninilchik alone. The villages are located between 14 mi (Ninilchik) and 50 mi (Kenai) away from the Cosmopolitan well site.

#### *Potential Impacts to Subsistence Uses*

Section 101(a)(5)(D) also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. NMFS has defined “unmitigable adverse impact” in 50 CFR 216.103 as: an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The primary concern is the disturbance of marine mammals through the introduction of anthropogenic sound into the marine environment during the proposed drilling program. Marine mammals could be behaviorally harassed and either become more difficult to hunt or temporarily abandon traditional hunting grounds. If a large or very large oil spill occurred, it could impact subsistence species. However, as previously mentioned, oil spill is not anticipated to occur (nor authorized), and measures have been taken to prevent a large or very large oil spill. Oil spill trajectory scenarios developed in preparation of the ODPCP indicate that potential spills would travel south through the central channel of Cook Inlet, away from shoreline subsistence harvest areas. The proposed drilling program should not have any impacts to beluga harvests as none currently occur in Cook Inlet. Additionally, subsistence harvests of other marine mammal species are limited in Cook Inlet and typically occur in months when the proposed drilling program would not operate.

The proposed mitigation measures described earlier in this document will reduce impacts to any hunts of harbor seals or other marine mammal species that may occur in Cook Inlet. These measures will ensure that marine mammals are available to subsistence hunters.

#### *Unmitigable Adverse Impact Analysis and Preliminary Determination*

The project will not have any effect on current beluga whale harvests because no beluga harvest will take place in 2016. Additionally, the proposed drilling area is not an important native subsistence site for other subsistence species of marine mammals. Also, because of the relatively small proportion of marine mammals utilizing Cook Inlet, the number harvested in any future hunts would be expected to be extremely low. Therefore, because the proposed program would result in only temporary disturbances, the drilling program would not impact the availability of these other marine mammal species for subsistence uses.

The timing and location of subsistence harvest of Cook Inlet harbor seals may coincide with BlueCrest's project late in the proposed drilling season, but because this subsistence hunt is conducted opportunistically and at such a low level (NMFS, 2013c), BlueCrest's program is not expected to have an impact on the subsistence use of harbor seals.

NMFS anticipates that any effects from BlueCrest's proposed drilling program on marine mammals, especially harbor seals and Cook Inlet beluga whales, which are or have been taken for subsistence uses, would be short-term, site specific, and limited to inconsequential changes in behavior. NMFS does not anticipate that the authorized taking of affected species or stocks will reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (1) Causing the marine mammals to abandon or avoid hunting areas; (2) directly displacing subsistence users; or (3) placing physical barriers between the marine mammals and the subsistence hunters; and that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met. In the unlikely event of a major oil spill in Cook Inlet, there could be major impacts on the availability of marine mammals for subsistence uses. As discussed earlier in this document, the probability of a major oil spill occurring over the life of the project is low. Additionally, BlueCrest developed an ODPCP. Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable



adverse impact on marine mammal availability for taking for subsistence uses from BlueCrest’s proposed activities.

**Endangered Species Act (ESA)**

Cook Inlet beluga whales are listed as endangered under the ESA. The U.S. Army Corps of Engineers consulted with NMFS on an earlier version of this proposed project pursuant to section 7 of the ESA. On April 25, 2013, NMFS concurred with the conclusion that the proposed exploratory drilling program in lower Cook Inlet is not likely to adversely affect beluga whales, beluga whale critical habitat, or Steller sea lion critical habitat. However, due to the monitoring conducted at the well site in 2013, NMFS concluded that Section 7 consultation is necessary, as listed species, particularly Steller sea lions, humpback whales, and belugas, may be affected. Therefore, NMFS is undertaking consultation pursuant to

section 7 of the ESA as part of this activity.

**National Environmental Policy Act (NEPA)**

NMFS has prepared a Programmatic Draft Environmental Assessment (EA) for issuance of IHAs for oil and gas activities in Cook Inlet for the 2016 open water season (including BlueCrest’s activities). The Draft EA was made available for public comment in February, 2016 (81 FR 12474). Public comments received on the Draft EA will either be incorporated into the final EA and a Finding of No Significant Impact (FONSI) will be issued, or an Environmental Impact Statement (EIS) will be prepared prior to issuance of the IHA (if issued).

**Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to BlueCrest for conducting an oil and gas production drilling program

in lower Cook Inlet during the 2016 open water season, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This IHA is valid from August 1, 2016 through June 30, 2017.
2. This IHA is valid only for activities associated with BlueCrest’s lower Cook Inlet oil and gas production drilling program. The specific areas where BlueCrest’s drilling operations will occur are described in the April, 2016 IHA application and depicted in Figure 1 of the application.

**3. Species Authorized and Level of Take**

The incidental taking of marine mammals, by Level B harassment only, is limited to the following species in the waters of Cook Inlet:

Common name	Scientific name	Number of takes
<b>Odontocetes:</b>		
Beluga whale .....	<i>Delphinapterus leucas</i> .....	5
Harbor porpoise .....	<i>Phocoena phocoena</i> .....	15
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If any marine mammal species not listed above are encountered during operations and are likely to be exposed to sound pressure levels (SPLs) greater than or equal to 160 dB re 1 μPa (rms) for impulse sources or greater than or equal to 120 dB re 1 μPa (rms), then the Holder of this IHA must shut-down the sound source prior to the animal entering the applicable Level B isopleth to avoid take.

4. The authorization for taking by harassment is limited to the following acoustic sources (or sources with comparable frequency and intensity) and from the following activities:

- a. Airgun array with a total discharge volume of 720 in<sup>3</sup>; and
- b. impact hammer during drive pipe driving.

5. The taking of any marine mammal in a manner prohibited under this IHA must be reported immediately to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS or her designee.

6. The holder of this IHA must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, as well as the Field Supervisor of the Protected Resources Division in the Alaska Regional Office at least 48 hours prior to the start of exploration drilling activities (unless constrained by the date of issuance of this IHA in which case notification shall be made as soon as possible).

7. Mitigation and Monitoring Requirements: The Holder of this IHA is required to implement the following mitigation and monitoring requirements when conducting the specified activities to achieve the least practicable impact on affected marine mammal species or stocks:

- a. Utilize at least two qualified, vessel-based Protected Species Observers (PSOs) to visually watch for and monitor marine mammals near the drill rig during specified activities below (drive pipe hammering and VSP

activities) before and during start-ups of sound sources day or night, allowing for one PSO to be on-duty while the other is off duty. PSOs shall have access to reticle binoculars, big-eye binoculars, and night vision devices. PSO shifts shall last no longer than 4 hours at a time. PSOs shall also make observations during daytime periods when the sound sources are not operating for comparison of animal abundance and behavior, when feasible. When practicable, as an additional means of visual observation, drill rig or vessel crew may also assist in detecting marine mammals.

b. When a mammal sighting is made, the following information about the sighting will be recorded:

- i. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from the PSO, apparent reaction to activities (e.g., none,

avoidance, approach, paralleling, etc.), closest point of approach, and behavioral pace;

ii. Time, location, speed, activity of the vessel, sea state, ice cover, visibility, and sun glare;

iii. The positions of other vessel(s) in the vicinity of the PSO location (if applicable);

iv. The rig's position and water depth, sea state, ice cover, visibility, and sun glare will also be recorded at the start and end of each observation watch, every 30 minutes during a watch, and whenever there is a change in any of those variables.

c. Within safe limits, the PSOs should be stationed where they have the best possible viewing;

d. PSOs should be instructed to identify animals as unknown where appropriate rather than strive to identify a species if there is significant uncertainty;

e. Drive Pipe Hammering Mitigation Measures:

i. PSOs will observe from the drill rig during impact hammering out to the 160 dB (rms) radius of 1.6 km (1 mi). If marine mammal species for which take is not authorized, or if any listed species (beluga whales, humpback whales, or Steller sea lions) are about to enter this zone, then use of the impact hammer must cease.

ii. If cetaceans approach or enter within the 180 dB (rms) radius of 250 m (820 ft) or if pinnipeds approach or enter within the 190 dB (rms) radius of 60 m (200 ft), then use of the impact hammer must cease. Following a shutdown of impact hammering activities, the applicable zones must be clear of marine mammals for at least 30 minutes prior to restarting activities.

iii. PSOs will visually monitor out to the 160 dB radius for at least 30 minutes prior to the initiation of activities. If no marine mammals are detected during that time, then BlueCrest can initiate impact hammering using a "soft start" technique. Hammering will begin with an initial set of three strikes at 40 percent energy followed by a 1 min waiting period, then two subsequent three-strike sets. This "soft-start" procedure will be implemented anytime impact hammering has ceased for 30 minutes or more. Impact hammer "soft-start" will not be required if the hammering downtime is for less than 30 minutes and visual surveys are continued throughout the silent period, and no marine mammals are observed in the applicable zones during that time.

f. VSP Airgun Mitigation Measures:

i. PSOs will observe from the drill rig during airgun operations out to the 160 dB radius of 2.5 km (1.55 mi). If marine

mammal species for which take is not authorized, or if any listed species (beluga whales, humpback whales, or Steller sea lions) are about to enter this zone, then use of the airguns will cease.

ii. If cetaceans approach or enter within the 180 dB (rms) radius of 240 m (787 ft) or if pinnipeds approach or enter within the 190 dB (rms) radius of 120 m (394 ft), then use of the airguns will cease. Following a shutdown of airgun operations, the applicable zones must be clear of marine mammals for at least 30 minutes prior to restarting activities.

iii. PSOs will visually monitor out to the 160 dB radius for at least 30 minutes prior to the initiation of activities. If no marine mammals are detected during that time, then BlueCrest can initiate airgun operations using a "ramp-up" technique. Airgun operations will begin with the firing of a single airgun, which will be the smallest gun in the array in terms of energy output (dB) and volume (in<sup>3</sup>). Operators will then continue ramp-up by gradually activating additional airguns over a period of at least 30 minutes (but not longer than 40 minutes) until the desired operating level of the airgun array is obtained. This ramp-up procedure will be implemented anytime airguns have not been fired for 30 minutes or more. Airgun ramp-up will not be required if the airguns have been off for less than 10 minutes and visual surveys are continued throughout the silent period, and no marine mammals are observed in the applicable zones during that time.

g. No initiation of survey operations involving the use of sound sources is permitted from a shutdown position at night or during low-light hours (such as in dense fog or heavy rain).

h. During rig towing operations, speed will be reduced to 8 knots or less, as safety allows, at the approach of any whales or Steller sea lions within 2,000 ft (610 m) of the towing operations.

i. Helicopters must maintain an altitude of at least 1,000 ft (305 m), except during takeoffs, landings, or emergency situations.

8. Reporting Requirements: The Holder of this IHA is required to:

a. Submit a draft Technical Report on all activities and monitoring results to NMFS' Permits and Conservation Division within 90 days of expiration of the IHA. The Technical Report will include:

i. Summaries of monitoring effort (total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

ii. Analyses of the effects of various factors influencing detectability of marine mammals (e.g., sea state, number of observers, and fog/glare);

iii. Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

iv. Analyses of the effects of the proposed project activities on marine mammal behaviors;

v. Sighting rates of marine mammals during periods with and without drilling operation activities (and other variables that could affect detectability), such as: (A) Initial sighting distances versus activity state; (B) closest point of approach versus activity state; (C) observed behaviors and types of movements versus activity state; (D) numbers of sightings/individuals seen versus activity state; (E) distribution around the drill rig versus activity state; and (F) estimates of take by Level B harassment based on presence in the 120 dB and 160 dB harassment zones.

b. Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft technical report. If NMFS has no comments on the draft technical report, the draft report shall be considered to be the final report.

9.a. In the unanticipated event that BlueCrest's specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), BlueCrest shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, her designees, the Alaska Region Protected Resources Division, NMFS, and the Alaska Regional Stranding Coordinators. The report must include the following information:

i. Time, date, and location (latitude/longitude) of the incident;

ii. The name and type of vessel involved;

iii. The vessel's speed during and leading up to the incident;

iv. Description of the incident;

v. Status of all sound source use in the 24 hours preceding the incident;

vi. Water depth;

vii. Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

viii. Description of marine mammal observations in the 24 hours preceding the incident;

ix. Species identification or description of the animal(s) involved;

x. The fate of the animal(s); and

xi. Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with BlueCrest to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. BlueCrest may not resume their activities until notified by NMFS via letter or email, or telephone.

b. In the event that BlueCrest discovers an injured or dead marine mammal, and the lead PSO 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 described in the next paragraph), BlueCrest will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, her designees, the Alaska Region Protected Resources Division, NMFS, and the NMFS Alaska Stranding Hotline. The report must include the same information identified in the Condition 9(a) above. If the observed marine mammal is dead, activities may continue while NMFS reviews the circumstances of the incident. If the observed marine mammal is injured, measures described in Condition 10 below must be implemented. NMFS will work with BlueCrest to determine whether modifications in the activities are appropriate.

c. In the event that BlueCrest discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in Condition 2 of this IHA (*e.g.*, carcass with moderate to advanced decomposition or scavenger damage), BlueCrest shall report the incident to the Chief of the Permits and Conservation Division, Office of

Protected Resources, NMFS, her designees, the Alaska Region Protected Resources Division, NMFS, the NMFS Alaska Stranding Hotline (1-877-925-7773), and the Alaska Regional Stranding Coordinators within 24 hours of the discovery. BlueCrest shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. If the observed marine mammal is dead, activities may continue while NMFS reviews the circumstances of the incident. If the observed marine mammal is injured, measures described in Condition 10 below must be implemented. In this case, NMFS will notify BlueCrest when activities may resume.

10. The following measures describe the specific actions BlueCrest must take if a live marine mammal stranding is reported in Cook Inlet coincident to, or within 72 hours of seismic survey activities involving the use of airguns. A live stranding event is defined as a marine mammal: (i) On a beach or shore of the United States and unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in apparent need of medical attention; or (iii) in the waters under the jurisdiction of the United States (including navigable waters) but is unable to return to its natural habitat under its own power or without assistance.

a. Should BlueCrest become aware of a live stranding event (from NMFS or another source), BlueCrest must immediately implement a shutdown of the airgun array.

i. A shutdown must be implemented whenever the animal is within 5 km of the seismic airguns.

ii. Shutdown procedures will remain in effect until NMFS determines that, and advises BlueCrest that, all live animals involved in the stranding have left the area (either of their own volition or following herding by responders).

b. Within 48 hours of the notification of the live stranding event, BlueCrest must inform NMFS where and when

they were operating airguns and at what discharge volumes.

c. BlueCrest must appoint a contact who can be reached 24/7 for notification of live stranding events. Immediately upon notification of the live stranding event, this person must order the immediate shutdown of the airguns.

d. These conditions are in addition to Condition 9.

11. Activities related to the monitoring described in this IHA do not require a separate scientific research permit issued under section 104 of the MMPA.

12. A copy of this IHA must be in the possession of all contractors and PSOs operating under the authority of this IHA.

13. Penalties and Permit Sanctions: Any person who violates any provision of this IHA is subject to civil and criminal penalties, permit sanctions, and forfeiture as authorized under the MMPA.

14. This IHA may be modified, suspended or withdrawn if the Holder fails to abide by the conditions prescribed herein or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

#### Request for Public Comments

NMFS requests comment on our analysis, the draft authorization, and any other aspect of the Notice of Proposed IHA for BlueCrest's proposed lower Cook Inlet oil and gas production drilling program. Please include with your comments any supporting data or literature citations to help inform our final decision on BlueCrest's request for an MMPA authorization.

Dated: May 26, 2016.

**Donna S. Wieting,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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